TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 167.

THE UNITED STATES, PETITIONER,

vs.

GEORGE RIGGS & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 18, 1905.
CERTIORARI AND RETURN FILED JANUARY 13, 1906.

(20018.)

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a United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
GEORGE RIGGS & CO., APPELLEES. } No. 3412.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States for the Southern District of New York.

1 *Petition.*

United States Circuit Court for the Southern District of New York.

In the matter of the application of George Riggs & Company, for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Oceanic," date of entry, Mar. 28, 1902, entry No. 58044. } 3412. 4810–H/10786.

To the honorable the Circuit Court of the United States for the Southern District of New York:

Your petitioners, George Riggs & Company, being dissatisfied with a decision made on or about the July 8th, 1903, by the Board of General Appraisers, designated by the Secretary of the Treasury, for and
2 on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as to the rate and amount of duty chargeable on certain merchandise imported at said port by your petitioners as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of cotton cloth.

The same was classified and assessed by said collector for duty at the rate of 35 per cent. ad val., and 2 cents in addition under pars. 306 and 307, Sch. I, act of July 24th, 1897. Your petitioner being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth in reasons for their objection thereto, claiming the said merchandise to be dutiable at the appropriate specific rate according to count under paragraphs 306 and 307, Sch. I, act of July 24th, 1897.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said Board herein complained of, your petitioner say, the Board of Appraisers erred as matters of law:

1. In holding that the words "of the same description or condition" in paragraph 313 of the tariff act, are manifestly broad enough to include

all elements of description referred to in the previous paragraphs of this schedule, describing cotton cloth of various kinds, weights, and count of threads and value.

3 2. In holding that any other standard of value than that provided in said paragraph 313 could be applied to goods dutiable under said paragraph.

3. In holding that the specific duties provided according to value in said paragraph 313 could be added to maximum ad valorem duties provided for cotton cloth in other paragraphs of said schedule.

4. In holding that the specific duties provided in said paragraph 313 could be added to ad valorem rates provided for in provisos to other paragraphs in said schedule.

5. In not holding that specific rates based upon value as provided in said paragraph 313 should be added only to specific rates provided for goods of same description or condition in paragraphs 306 and 307 of said act.

6. In not sustaining the protest of the importers and overruling the action of the collector.

7. In sustaining the action of the collector and overruling the protest of the importers.

Accordingly, your petitioner respectfully pray the court to order the said Board of General Appraisers to return to the court the record and evidence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision and to determine the questions of law and fact involved in the same.

Dated New York, August 6th, 1903.

GEORGE RIGGS & CO., *Petitioner.*
By CURIE, SMITH & MAXWELL,
Attorneys, 22 William Street, New York City.

4 *Order.*

At a stated term of the United States Circuit Court for the Southern District of New York, held at the United States Court and Post-Office building, in the city of New York, on the 6th day of August, 1903.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of George Riggs & Company, for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Oceanic," Mar. 28, 1902.	3412. 4810-H / 10786.

Upon reading and filing the annexed petition of George Riggs & Company, importers of the merchandise therein described, and on motion of Curie, Smith & Maxwell, attorneys for said petitioners,

It is ordered, that the Board of Appraisers at the port of New York, return to this court the record and evidence taken by them in each of the

above entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

GEORGE C. HOLT, *U. S. Judge.*

5 *Bond.*

Know all men by these presents that I, William H. Northrup, am held and firmly bound unto the United States of America in the sum of fifty dollars to be paid to the said United States of America.

For the payment of which well and truly to be made I bind myself, my heirs, executors, and administrators jointly and severally firmly by these presents. Sealed with my seal, and dated the day of August, in the year of our Lord, one thousand nine hundred and three.

Whereas George Riggs & Company have applied to the Circuit Court of the United States for the Southern District of New York for a review of the questions of law and fact involved in certain decisions of the Board of United States Appraisers made upon the entry of certain merchandise imported by them at per S. S. "Oceanic," March 28th, 1902.

Now, therefore, the condition of this obligation is such that if the above-named George Riggs & Company shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

[SEAL.] WILLIAM H. NORTHRUP.

Sealed and delivered and taken and acknowledged, this 5th day of August, 1903, before me.

[SEAL.] JOHN K. MAXWELL,
Notary Public, N. Y. Co.

6 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Northrup, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

WILLIAM H. NORTHRUP.

Sworn to this 5th day of August, 1903, before me.

[SEAL.] JOHN K. MAXWELL,
Notary Public, N. Y. Co.

This bond is approved as to form and amount and sufficiency of surety. Dated New York, August , 1903.

GEORGE C. HOLT, *J.*

7 In the Circuit Court of the United States, for the Southern District of New York.

[SEAL.] J. E. DOWSING,
Chief Clerk Board of U. S. General Appraisers.

In the matter of the application of George Riggs & Co., for the review of a decision of the U. S. General Appraisers as to the rate, etc., of duty on certain figured cotton goods imported per S. S. "Oceanic," Mch. 28, 1902.

Suit No. 3412.
Return of the Board of United States General Appraisers to the order of Hon. E. Henry Lamombe, circuit judge.
Dated New York, Oct. 27, 1903.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter, a copy of which is hereto annexed as Exhibit A, was received from the collector of customs at New York, submitting under the provisions of section 14 of the act of June 10th, 1890, the protest marked "Exhibit B," and described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of Entry.
10786	4810-H	Geo. Riggs & Co.	Oceanic.	Mch. 28/02

On January 28th, April 24th, and June 4th, 1903, witnesses appeared before the Board, produced samples, and were examined in rela-
8 tion to the goods imported. Copies of the testimony are annexed as Exhibits C, D, and E, and the samples are returned under a separate cover marked "Samples in suit No. 3412."

On July 8th, 1903, the Board rendered its decision upon said protest. A copy of the opinion, including the concurring opinion of General Appraisers Somerville and Fischer, is annexed as Exhibit F.

EXHIBIT A.

CUSTOMS SERVICE, OFFICE OF THE COLLECTOR,
New York, N. Y., September 15 '02.

BOARD OF U. S. GEN. APPRAISERS,
Port of New York.

GENTLEMEN: I submit the protest of Geo. Riggs & Co. #10786 * * * against the assessment of duty as made by this office on certain so-called "Cotton cloths and cotton crossovers and other manufactures of cotton," imported by them in the "Oceanic," March 28, 1902.

An inspection of the invoice shows that the goods covered by protest #10786 were retur'ed by the appraiser as "Bleached cotton, 100 150 and 150 200—covered by par. 313." Duty was assessed thereon at the appropriate rates under the provisions of paragraphs Nos. 306 and 307 of the act of July 24, 1897, and as the goods were returned by the appraiser as containing threads other than the ordinary warp and filling threads, the additional duty of two cents per square yard was also assessed thereon, under the provisions of par. 313 of the act of July 24, 1897. Note G. A. 4541, 4808, and 5151.

(Sd.) H. E. ESTERBROOK,
Spec. Dep. Coll.

9 EXHIBIT B.

NEW YORK, *August 22, 1902.*

Hon. COLLECTOR OF CUSTOMS, *New York.*

SIR: We hereby protest against your decision, liquidation and assessment of duties as made by you on our importations below mentioned, consisting of certain cotton cloths contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description, reference is hereby had, claiming:

First. That said cloths have not had introduced in the process of weaving, for the purpose of forming a figure, other than ordinary warp and filling threads, and are not therefore dutiable under paragraph 313, Schedule I, act of July 24th, 1897, as assessed, but are dutiable under paragraphs 304 to 309 of said schedule and act, according to weight and value per square yard, and number of threads per square inch, by virtue of the definition in paragraph 310 of said schedule and act.

Second. Goods dutiable under paragraph 313 should pay only the specific rates therein provided, according to their value per square yard in addition to the specific rates provided in paragraphs 304–309 for cotton cloth of the same description or condition, weight, and count of threads to the square inch. The ad valorem provisos of paragraphs 305–309 can not be applied to any goods assessed under paragraph 313, which has an ad valorem classification of its own. The addition of the specific rates imposed by paragraph 313 to the ad valorem rates of 30, 35 or 40 per cent provided in paragraphs 305–309 is therefore unauthorized and
10 illegal; and we give notice that he pay all other higher rates than is claimed above as the legal rate under compulsion, and to obtain possession of our goods. We claim that the duty exacted by you is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty.

EXHIBIT B.

Vessel.	From	Date of entry.	Entry No.	If ware-h'se W. H. bond.	Date of Liquidation.	Marks and numbers of packages.
Oceanic	L'pool ..	Mch. 28, /02	58044	-c-	Aug. 13, /02	G ◇R N Y 2197/2213

and others as per invoices and entries.

Decided July 8, 1903.

GEO. RIGGS & CO.

CURIE, SMITH & MAXWELL,
Attorneys, 20 William street, N. Y.

4810–H.

11 EXHIBIT C.

Before the Board of U. S. General Appraisers.

In the matter of protests, 4810-H, of George Riggs & Company et al., on towels, cotton, and flax.

NEW YORK, N. Y., *January 29, 1903.*

Present: General Appraiser DeVries.

Appearances: H. J. Webster, esq., for the Government. W. Wickham Smith, esq., and John K. Maxwell, esq., for the importers. C. D. Lawrence, stenographer.

4810-H.

W. H. PARKHILL, called as a witness and being duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Parkhill, you are an examiner in the fourth division of the Appraiser's office?

A. Yes.

Q. Examiner of cotton goods?

A. I am.

Q. Including countable cotton cloths?

A. I am.

Q. Also countable cotton cloths having threads other than the ordinary warp and weft threads?

A. I am.

Q. You measure such goods?

A. I do.

Q. And are familiar with them?

A. I am.

Q. You are the examiner who passed this invoice, are you not?

A. I am.

12 Q. I call your attention, in case No. 2204, to the first item there, which you have returned at 35 per cent and two cents, and I ask you if you are able to state as to that article the number of square yards to the pound?

A. Well, by taking the invoice statement. It is merely a mathematical problem which I could compute for you.

Q. You passed it and assessed the duty upon it without sending for the case?

A. Yes, sir.

Q. You did it on the invoice statements?

A. Yes, sir.

Q. Your original return was based on the invoice statement?

A. It is.

Q. Pursuing the same course with reference to the invoice as you pursued in your original return you will be able to state the number of square yards to the pound, will you not?

A. I can compute it.

Q. The count of threads in the case is between 150 and 200, is it not?

A. According to the invoice.

Q. The widths of the goods is stated on the invoice?
A. Yes.
Q. 28 inches?
A. Yes.
Q. The number of square yards is stated on the invoice?
A. Yes, sir.
Q. 800?
A. No; the number of square yards in the first item is 223, excuse me; it is 223 according to the invoice.
Q. The goods were bleached, were they not?
A. Yes, according to the invoice.
Q. The price is stated in the invoice, is it not?
A. Yes, sir. It is 5¾ pence, sterling.

13 Q. As soon as you have worked out the number of square yards to the pound you will be able to state what would be the specific rate provided for in the paragraph of those goods, irrespective of the ad valorem proviso at the end of the paragraph, would you not?
A. I think so.
Q. Are you able to state it now?
A. No.
Q. I shall ask you as to each of these articles I am now interrogating you about—to hand a memorandum to the general appraiser, showing the number of square yards to the pound and the specific rate under which those goods would be dutiable under the countable cotton paragraphs if the ad valorem proviso at the end of that paragraph should not be applied to them.

Ignoring paragraph 313, if you will, take the next item—you will find in that case another item—and make the same report on that. The same on the item in case 2206, returned at two cents—first item. And in case 2209, the first item.

Closed.

14 Board of Classification of U. S. General Appraisers.

In the matter of Protest No. 4810-H, of Geo. Riggs & Co. } Cottons figured.

NEW YORK, *April 24, 1903.*

Before General Appraiser De Vries:

Appearances: Albert H. Washburn, esq., counsel for the Treasury Department; Henry J. Webster, esq., assistant counsel for the Treasury Department; W. Wickam Smith, esq., for the importers. Geo. J. Puckhafer, stenographer.

WILLIAM H. PARKKILL, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

By Mr. WASHBURN:

Q. You are an examiner in the fourth division of the Appraiser's department?
A. I am.
Q. You are the examiner of cotton goods?
A. I am.

Q. Do you recall testifying in this case on or about the 29th of January, 1903?

A. I do.

Q. Do you remember being called by Mr. Smith on or about the 29th of January, 1903, in this matter?

15 A. Yes, I do.

Q. I call your attention, Mr. Parkkill, to something which I offer as Exhibit A in this case and will ask you if the goods covered by it represent actual importations into the port of New York?

A. They do.

Q. In the case in suit?

A. No, sir.

Q. Have you, at my request, computed the rate of duty under the countable clauses upon the sample of plain goods here which I shall ask to be designated as Exhibit A, No. 1?

A. Yes.

Q. Have you also, at my request, computed the rate of duty upon the other sample of fancy goods which I shall ask to be designated as Exhibit A, No. 2, in accordance with the method now pursued by the Appraiser's office, and also in accordance with the importer's claim in this case?

A. I have.

Q. Look at this exhibit, which I now hand you, and state if the figures which appear thereon were made by you in response to my request?

A. They were.

Mr. WASHBURN. I now offer in evidence this exhibit here referred to and ask to have it marked "Exhibit A."

Mr. SMITH. I object to its admission on the following grounds:

First. There is no evidence here by whom it was made or from whom imported and for aught the record shows that it was a specially designed and contrived article searched for for the purpose of being offered in evidence in this case, and there is no evidence that it represents any general goods.

16 Second. That it is wholly irrelevant and immaterial what other people are importing and what amount of duty would be paid by them under one theory or another theory. The sole question to be determined in this case being which of two provisions in the law is applicable to the goods, and it being the duty of the Board of General Appraisers to determine the question of classification raised by the protest without respect whether it will increase or lower the rate of duty.

Mr. WASHBURN. I wish to say in reply that the courts take cognizance of the fact that this is a protective tariff. The Board and the courts have done so repeatedly in other cases and have recognized the protective purposes of the law. I submit that it is manifest from a reading of the paragraph in question, to wit, 313, that Congress meant to impose the higher rate of duty on fancy goods, and it is legitimate for the Government to show by various illustrative samples that fact. If the theory which my brother is seeking to read into the law obtains, the effect would be a plain nullification of paragraph 313.

My associate reminds me that in 1890 in the celluloid case and the knit-goods case the courts took cognizance of the fact that the protective

effects of the law were very proper subjects for the consideration of the court. As to whether or not there is any ambiguity in the present act, I submit is a matter of argument. There certainly was in the act of 1883, to which counsel alludes, a plain provision of 15 per cent, or rather
25 per cent for paper and 15 per cent for manufacturers of
17 paper. Whether intentional or not, it was there, but as to the question of the paragraph here there is some doubt as to what Congress may have intended, and I think anything which will aid the Board and the courts in the interpretation of that intent is material and a proper subject to be made part of the record.

Mr. SMITH. I do not wish to be understood in any way contending in the argument I make that it is the duty of the courts or the Board of General Appraisers to ignore the effect of a tariff. The present one, for example, is the result of a protective policy—I do not dispute that—neither do I in the cases illustrated by counsel. I do not happen to recall the celluloid case, but I remember the knit-goods case very well. The question there was whether certain knit manufactured articles, such as hosiery, made up, were dutiable under the provision for wearing apparel made wholly or in part of wool. The decision in the case there incidentally alluded to the fact that the policy of the law was a protective policy, and that Congress would not have been likely to allow made-up wearing apparel to come in at a lower rate than it did piece goods. Now, if the question here were the subject of the protective policy on cotton goods as a class, or any particular class of cotton goods, such as cotton hosiery, or cotton damask, or cotton anything, I should not object to the courts or the Board referring, among other things, if they found any ambiguity, to the protective policy of the law.

I submit that you can not take a particular importation of a par-
18 ticular man and by proving that any construction of the act would make that article pay a lower rate of duty than any one set of goods was to pay, thereby drawing inference as to the intent or meaning of the interpretation of the act. That is what was sought to be done here. I submit that it is incompetent and illegitimate to admit the samples in evidence for the purpose of constructing the tariff law, and if admitted a very dangerous precedent would be established here.

By General Appraise' DE VRIES. The determination of what is the proper rate of duty in this case is a matter of argument. As I understand it, it is intended to illustrate the argument by certain illustrative samples. Illustrative samples are always admitted by the Board to show the different conditions of a particular article. They illustrate the different conditions of that particular sample. Samples in illustration of an argument I do not think are admissible.

Sample not admitted.

Mr. Washburn requests that the case be continued for hearing before the full Board.

Case continued to the regular calendar.

19

EXHIBIT E.

Board of Classification of U. S. General Appraisers.

In the matter of Protest No. 4810–H of Geo. Riggs & Company.

NEW YORK, N. Y., *June 4, 1903.*

Before: General Appraiser Somerville, chairman; General Appraiser Waite, General Appraiser Fischer.

Appearances: Albert H. Washburn, esq., counsel for the Treasury Department. W. Wickam Smith, esq., J. K. Maxwell, esq., appeared for the importers.

WILLIAM H. PARKHILL recalled.

By Mr. WASHBURN:

(After reading testimony of above witness, taken April 24, 1903.)

Q. Referring to the exhibit which you now hold in your hand, Mr. Parkhill, whether or not the goods there attached represent importations into this port?

A. Yes.

(Exhibit referred to offered in evidence.)

Mr. SMITH. I object to any testimony being offered here as to the rate or amount of duty that would or might be paid on certain illustrative samples produced, or to be produced, by the Government and which aforesaid are not the subject of this importation and offered, as is
20 stated, for the purpose of securing a construction of the act, on the ground that the construction of the act is to be passed upon by itself, the language of which is plain and unambiguous and leaves no room for construction; and that the admission of testimony for the purpose of showing what effect the construction of the act, according to its language, would have on other goods is incompetent.

By Judge SOMERVILLE. The Board will allow this testimony for the time being to go on the record and will hereafter consider and rule on the objection after due consideration of such.

(Sample marked "Illustrative Exhibit A, Protest No. 4810–H, June 4, 1903.")

Q. Referring to Illustrative Exhibit A, Mr. Parkhill, will you state under what paragraph the plain goods which are there referred to, Illustrative Exhibit A, No. 1, will be classified?

A. Paragraph 306.

Q. That is one of the countable paragraphs of the cotton schedule?

A. It is.

Q. Will you now state what would be the rate and amount of duty assessable under paragraph 306 upon that Illustrative Exhibit A, No. 1, according to the computation which you have made at my request?

A. The rate would be 35 per cent——

Mr. WASHBURN. One moment.

Q. That is to say, the plain goods which are covered by Illustrative Exhibit A, No. 1, would be assessed under the proviso of paragraph 306?

A. That is right.

21 Q. Now going to the fancy goods which are referred to as Illustrative A, No. 2, I will ask you to state the rate of duty

which they would take under the contention made by the importer in this case.

(Counsel for the importers requests to have computation shown.)

Q. Referring now to Illustrative Exhibit A, No. 2, will you explain the total amount of duty per square yard which would be assessed if specific duties only were imposed at the rate of four and one-half cents per square yard under paragraph 306, plus two cents under paragraph 313?

A. Seven and ninety-five hundredths cents per yard (7.95).

Q. Will you now state the rate and amount of duty which the same goods would be subjected to under the method now pursued by the Appraiser's office?

A. Twenty-three and fifteen hundredths (23.15) cents per yard.

Q. That is to say, it is the rate and amount of duty found by assessing these goods under the provisions of paragraph 306 and adding two cents under the provisions in paragraph 313?

A. That is it; yes.

Q. What would be the duty on the plain?

A. I tried to state that before, but the Government counsel interrupted me. The amount of duty on the plain at 35 per cent is eight and seventy-eight (8.78) cents per yard.

Q. And the amount of duty on this, the fancy?

A. Twenty-three and fifteen (15) (23.15) cents per yard.

By General Appraiser WAITE:

Q. How do you make up the 23.15?

22 A. By computing the article at the present rates provided for in section 306 and plus 313, would make the rates of duty 35 per cent ad valorem, and plus two cents additional, making the total duty on one yard of the fancy article 23.15 cents. The 23.15 represents the duty per lineal yard; deducting the two cents per square yard, the balance is the 35 per cent pro rata on the goods.

Q. How much of the duty is that 35 per cent pro rata?

A. The ad valorem duty on this fabric, referring to the fancy No. 2, in Illustrative Exhibit A, would be about twenty and three-quarter cents (20 3/4) per lineal yard, and you add to that the specific duty, which is about two and three-tenths (2.3) or two and three-eighths (2 3/8) cents, which brings it up to 23.15. I can figure out the rate absolutely correct, if required.

By Mr. WASHBURN:

Q. Now, Mr. Parkhill, I call your attention to an illustrative exhibit, which I shall offer in evidence, and ask you if the goods thereon represent actual importations into the port of New York?

A. Yes.

Q. Represent importations?

A. Yes.

Q. Goods which you frequently pass?

A. Goods I have frequently passed.

(Sample offered in evidence.

Admitted with the same understanding as the previous exhibit. Marked "Illustrative Exhibit B, Protest No. 4810-H, June 4, 1903.")

Q. Under what paragraphs are these goods assessed?

A. 306.

Q. Will you now state the duty imposed upon the plain goods covered by Illustrative Exhibit B, No. 1, under the proviso of paragraph 306?

23 A. The total amount of duty imposed on that sample would be nine and three-tenths (9.3) per meter, nine and three-tenths cents.

Q. Are the fancy goods, referring to Illustrative Exhibit B, No. 2, of the same description as No. 1, except that it has some extra threads other than the ordinary warp and filling threads?

A. Yes.

Q. Will you now state what is the duty per unit upon the fancy goods in this exhibit, imposed at the rate of 35 per cent and two cents per square yard?

A. Sixteen and eighty-one hundredths (16.81) cents per meter.

Q. What is the total amount of duty per meter if specific duties only were imposed, that is to say, specific duties under 306, plus the additional two cents under paragraph 313?

A. Five and ninety-five (5.95) cents per meter.

By Mr. SMITH:

Q. Take that first article you had, this article you referred to as plain cloth.

A. Yes.

Q. What did you say was the duty on that under the proper paragraph of the cotton schedule?

A 8.78 cents per yard.

Q. Now, then, it differs from the pink article only in color and pattern?

A. The additional threads the only difference.

Q. So far as the plain pattern of this pink article is concerned it is the same as the blue?

A. It is.

Q. Both in color and count?

A. Yes.

Q. And weight per square yard?

A. It cannot weigh the same.

Q. If this pink article had no figure on it it would weigh the same as the blue?

24 A. Yes.

Q. Now, then, what did you say was the duty on that pink article if you add the two cents per square yard to the ad valorem rate contained in the paragraph that describes goods according to count?

A. The total amount of duty is 23.15 cents per yard.

Q. So that if the ad valorem rate, plus two cents, is the proper rate, the effect of superimposing this pattern upon this fabric would be to increase the amount of duty nearly three hundred per cent?

A. Not at all.

Q. Why not?

A. For the simple reason I would say that the introduction of these

additional threads takes it into another article of merchandise to such an extent that it enhances its value.

Q. The duty on the plain one is 8.78 cents?

A. Yes, a yard.

Q. The duty on the pink, if you add the two cents, is 23.15?

A. Yes.

Q. What would be the duty on the pink if you add the two cents to the specific rate provided for an article of that weight, count, and number of threads?

A. Seven and ninety-five hundredths (7.95) cents per yard.

Q. You have made a statement here about the ad valorem rate on this article; on what value did you compute the rate?

A. On twelve and one-half (12½) cents per yard.

Q. Where did you get that value from?

A. Pardon me, the goods should pay 35 per cent if they exceeded in value twelve and one-half cents.

25 Q. In order to determine what 35 per cent ad valorem is you have to multiply something by 35 per cent; what was that?

A. The correct market value.

Q. Where did you get that? Was it the value stated in the invoice?

A. Yes; the invoice, which was the correct market value.

Q. What is the count of threads to the square inch of the blue article?

A. Exceeds one hundred but not one hundred and fifty threads.

Q. What is the count of the pink article?

A. Exceeds one hundred but does not exceed one hundred and fifty; that is to say, I presume that counsel means the groundwork of the cloth.

Q. When you say that it does not exceed, that the pink does not exceed one hundred and fifty and does exceed one hundred, you counted only the threads in the groundwork?

A. We have counted the ordinary warp and filling threads as provided for in the tariff.

Q. Have you counted in that count the threads that compose the figures?

A. We have not; they are other than ordinary warp and filling.

Q. If you had, would they have made the count exceed a count of one hundred and fifty to the square inch?

A. No.

Q. Who imported this article?

A. I must respectfully reply to counsel that I must decline to answer that question; we are not permitted to divulge importations; it would violate my oath of office.

Mr. SMITH. I ask the Board to instruct the witness to answer the question.

The Board is of the opinion that it is sufficient to know the
26 values put on these goods by these parties, and declines the request of Mr. Smith.

Mr. SMITH. I move to strike out all the testimony of the witness upon the value of these fabrics on the ground that he has based his statement as to values, as he has already testified, on the invoice values, and that the Board 'as decided that the importation could not be identical for the purpose of verifying the correctness of his statements.

Motion denied.

Q. Did you select the particular samples that you brought here, or were they selected by somebody else?

A. I selected them.

Q. In accordance with any instructions you received?

A. I was requested to select samples.

Q. What was the nature of that request?

A. I was requested to select samples for use in the illustration of these facts.

Q. Of what facts?

A. Showing what the plain material would pay and what the fancy would pay.

Q. Were you requested to obtain samples where the duty on the plain would be greater than the duty on the fancy?

A. I was.

Q. Who gave you these instructions, or who made the request?

A. (To the court:) Pardon me, am I obliged to answer?

(Counsel for the Treasury Department states that he has no objection to witness answering. Witness is instructed to answer.)

A. The counsel for the Government.

Q. It was at his request that you did this?

27 A. It was.

Q. He asked you to see if you could find samples of goods where it would appear by computation that the duty on a plain article was more than the duty on a figured article of the same character and count?

A. Yes.

Q. He asked you to do that?

A. Yes.

Q. How many samples did you find?

A. He asked me to get him up one or two, I forgot how many, not a large quantity, and I did so.

Q. Did you get up any more?

A. I devoted quite a little time to it.

Q. Did you show him any other samples besides those put in evidence?

A. I did not.

By Mr. WASHBURN:

Q. Do you recall the conversation you had with me upon this subject?

A. I think I do.

Q. Did I say to you, if you could, to produce representative samples where plainer goods take a higher rate of duty than on fancy goods of similar character, under the claim made by the importer?

A. You did.

JULY 7, 1903.

SOMERVILLE, General Appraiser:

The Board, after due consideration, is of opinion that the testimony of witness William H. Parkhill, with the accompanying exhibits referred to by him, is relevant to the issues under consideration and properly admissible in evidence. The same is accordingly hereby admitted as a part of this record.

28

(24562—G. A. 5374.) Cotton cloth.

Construction of paragraph 313, tariff act of 1897: The additional duties imposed by paragraph 313, tariff act of 1897, upon cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, are to be assessed in addition to any duty, whether specific or ad valorem, provided in the other paragraphs covering cotton cloth.

Before the U. S. General Appraisers at New York, July 8, 1903.

In the matter of the protest, 4810 h—10786, of George Riggs & Co., against the decision of the collector of customs at New York, N. Y., as to the rate and amount of duties chargeable on certain merchandise, imported per "Oceanic," and entered March 28, 1902.

Opinion by Waite, General Appraiser.

These protests relate to certain items on the invoices representing cotton cloths in which other than ordinary warp and filling threads have been introduced in the process of weaving to form a figure. The question herein arises under paragraphs 306, 307, and 313 of the tariff act of 1897, which read as follows:

306. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the
29 pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; if bleached, and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: Provided, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over nine cents per square yard, thirty per centum ad valorem bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

307. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and
30 not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not ex-

ceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square yards to the pound, three and one-half cents per square yard; if bleached, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square yards to the pound, four and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cent' per square yard: Provided, That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over ten cents per square yard, thirty-five per centum ad valorem; bleached, valued at over twelve cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of forty per centum ad valorem.

31 313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard, if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The items in controversy are given in the following table, together with their descriptions as they appear from the record and testimony in the case:

TABLE I.

Item.	Case.	Count of.	Condition.	Value per square yard.
1561	2204	100-150	Colored	14¼ cents or over, 12½ cents
1431	2204	100-150	Bleached	11¼ cents or over, 11 cents.
1	2206	100-150	Colored	13½ cents or over, 12½ cents.
N610	2209	150-200	Bleached	13½ cents or over, 12 cents

32 It will be seen by reference to the above table that the first three items contain between 100 and 150 threads to the square inch, counting the warp and filling; hence they fall under paragraph 306 of the tariff act. The last or fourth item contains from 150 to 200 threads, and therefore falls under paragraph 307.

All the goods were assessed under the provisios to paragraphs 306 and 307 at 35 per centum ad valorem—the first and third items because they are colored and valued at over 12½ cents per square yard, the second because it was bleached and valued at over 11 cents per square yard, and the last one because it was bleached and valued at over 12 cents per square yard. There was also added a specific duty of 2 cents per square yard as provided in paragraph 313.

It is claimed by the importer that the provisos to paragraphs 306 and 307 are not to be considered in ascertaining the rate to which the additional duty is to be added, and, while it is conceded that the additional duty of 2 cents per square yard should be assessed, it is claimed that it should be added to the duty to be ascertained by classifying the goods under the body of the paragraph, the first three under paragraph 306 and the last under paragraph 307. It is further contended that the additional duty provided for by paragraph 313 can not be added to the duty provided for in the provisos to said paragraphs 306 and 307, because it is a specific duty, and the duty there provided for is an ad valorem duty.

We can not so hold. It will be observed that the duties provided for under the bodies of paragraphs 306 and 307 are duties based upon the count of the threads, the weight of the goods, and the further question as to whether they are unbleached, bleached, dyed, colored, stained,
33 painted, or printed; while the duty assessed under the provisos to said paragraphs is made dependent upon the count of threads, the value, and the question as to whether they are unbleached, bleached, dyed, colored, stained, painted, or printed, leaving out the question of the weight of the goods, and adding in lieu thereof the value per square yard. Thus, it will be seen that the classes of goods provided for in the bodies of the paragraphs are entirely separate and distinct from those provided for in the provisos.

It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind, it is hardly conceivable that Congress intended to enact paragraph 313, and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importer's contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.

It must be remembered that this is an additional duty levied, regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list providing for 1 cent per yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additioual duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

The case of Bensusan v. Murphy (10 Blatch., 530) is cited as a controlling case by the importer.

34 We think there is a clear distinction between the laws and in the application thereof. That was a duty levied "by the gallon"

upon wines, so stipulated and provided in the act. Had there also been a subsequent clause imposing an additional duty to that imposed either upon the wine in the bottles or in the casks, we think it would have been in point, and the interpretation would have been as here given.

The protest is therefore overruled and the collector's decision affirmed.

(Sd.) H. M. SOMERVILLE.
I. F. FISCHER.
B. I. CLASS,
U. S. General Appraiser.

[Concurring opinion of General Appraisers Somerville and Fischer.]

We concur in the conclusion reached in the foregoing opinion that the additional duty assessed on the merchandise under the provisions of paragraph 313 was properly assessed by the collector.

Paragraph 310 of the present tariff act of 1897 provides that—

The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule (meaning Schedule I, cotton manufactures), unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp and filling threads of which can be counted by unraveling or other practical means.

The goods in question are undoubtedly "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving or forming a figure," and clearly come within the descriptive terms used in said paragraph 313. The question at issue turns on the meaning of the phrase providing that goods of this description, whether unbleached, bleached, colored, stained, painted, or printed shall pay—

35 "Additional to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

The words "of the same description or condition" are manifestly broad enough to include all elements of description referred to in the previous paragraphs of this schedule describing cotton cloth of various kinds, weights, and count of threads and value. If any other construction were placed upon this paragraph, it appears from the testimony taken at the hearing that there are some instances in which the duties levied under said paragraph 313 would be less than instead of additional to those levied upon cotton cloths which do not contain other than the ordinary warp and filling threads introduced in the process of weaving to form figures. The purpose of Congress in levying this additional duty would, by such construction, be entirely defeated.

(Sd.) H. M. SOMERVILLE.
I. F. FISCHER.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascer-

tained by said Board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
I. F. FISCHER,
BYRON S. WAITE,
Board of U. S. General Appraisers.

36 United States Circuit Court, Southern District of New York.

GEORGE RIGGS & COMPANY,
vs.
THE UNITED STATES. } No. 3412.

Appeal from a decision of the Board of United States General Appraisers.

TOWNSEND, Circuit Judge.

The merchandise in question consists of figured cotton cloth, which was assessed for duty under the provisions of paragraph 313 of the tariff act of 1897, which reads as follows:

"313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

The collector made the assessment subject to the duties imposed by said paragraph and also assessed duty at the rate of 35 per cent ad valorem under the provisions of the countable cotton clauses, paragraphs 306 and 307 of said act, which provides a rate of duty on cotton cloth, determined according to its conditions, as bleached, dyed, colored, etc., the tests being, as referred to in said paragraph 313, description,
37 condition, weight and count of threads. Said paragraphs, however, contain a further proviso that on all cotton cloth exceeding a certain number of threads, etc., a further ad valorem duty shall be collected.

Counsel for the importers insists that inasmuch as paragraph 313 provides for a duty additional to that provided "for other cotton cloth of the same description, or condition, weight and count of threads," under paragraphs 306 and 307, but does not refer to the ad valorem proviso, there was no justification for the action of the collector in assessing the ad valorem duty under paragraphs 306 or 307.

Counsel for the Government contends that the words in paragraph 313, "of the same description or condition," are broad enough to include "value." There would be considerable force in this contention were it not for the fact that said words are followed by the words "weight and count of threads," while all reference to the ad valorem provision is omitted. The chief contention of counsel for the Government is that as the act of 1897 is intended as a protective tariff, the effect of the con-

struction contended for by the importers would be to nullify the intent of the law by permitting fancy goods to come in at a lower rate of duty than plain goods. The evidence on this point, however, is incomplete and unsatisfactory. It is practically conceded by counsel for the Government that in this specific case the fancy goods would pay a slightly higher rate of duty than the plain goods. Certain illustrative samples were introduced to show that in certain other cases fancy goods would pay a lower rate of duty than plain goods, but it does not appear that this would be true as to fancy goods generally.

The question is a doubtful one. If Congress intended that the ad valorem duty provided for in paragraphs 306 and 307 should be imposed upon these goods, it could have avoided all question by inserting
38 the word "value." It has not done this; and in these circumstances it would seem to be the duty of the court to resolve the doubt raised by reason of such omission in favor of the importer.

The decision of the Board of General Appraisers is reversed.

W. Wickham Smith, for the importers.

D. Frank Lloyd, asst. U. S. attorney, and Albert H. Washburn, counsel for the Treasury Department, of counsel for the United States.

(Endorsed:) Circuit Court of the United States for the Southern District of New York. George Riggs & Company vs. The United States (suit No. 3412). Opinion, Townsend, C. J. U. S. Circuit Court, Southern District of New York, filed May 27, 1904. John A. Shields, clerk.

39 At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States Circuit Court rooms, in the Post-Office Building in the city of New York, on the 15th day of June, 1904.

Present: The Hon. William K. Townsend, U. S. Circuit Judge.

GEORGE RIGGS & COMPANY
vs.
THE UNITED STATES. } 3412.

The above cause coming on for hearing and determination before this court, on the application of the above-named importers, for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon.

Now, after hearing D. Frank Lloyd, esq., assistant U. S. attorney, and Albert H. Washburn, of counsel for Treasury Dept., on behalf of the collector, for affirmance, and W. Wickham Smith, esq., counsel for said importers, for reversal, and on motion of Curie, Smith & Maxwell, attorneys for said importers, it is

Ordered, adjudged, and decreed that there was error in said proceedings before said Board of General Appraisers, and that their decision therein be, and the same is hereby, in all things reversed, and that said merchandise is dutiable at the specific rates per square yard pro-
40 vided in pars. 306 and 307, Sch. I, tariff act of July 24, 1897, and

in addition thereto two cents per square yard under paragraph 313 of the same schedule and act.

WM. K. TOWNSEND,
U. S. Circuit Judge.

Consented to as to form.

HENRY L. BURNETT,
U. S. Attorney,
Per LLOYD.

(Endorsed:) No. 3412. United States Circuit Court, Southern District of New York. George Riggs & Company vs. The United States. Judgment of reversal. Curie, Smith & Maxwell, attorneys for importers, 22 William street, N. Y. City. U. S. Circuit Court, Southern District of New York, filed Jun. 17, 1904. John A. Shields, clerk.

41 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
GEORGE RIGGS & COMPANY, APPELLEES.
} "A" suit No. 3412.

To the United States Circuit Court of Appeals for the Second Circuit:

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the decision and judgment of the U. S. Circuit Court entered herein on the 17th day of June, 1904.

Dated, July 14th, 1904.

W. H. MOODY,
Attorney-General.
Per HENRY L. BURNETT,
U. S. Attorney.

The foregoing application is granted and appeal allowed.
Dated, New York, July 14th, 1904.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

42 (Endorsed:) "A" suit No. 3412. U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, vs. George Riggs & Co., appellees. Application for and allowance of appeal. Henry L. Burnett, U. S. attorney. To Curie, Smith & Maxwell, attorneys for appellees, 22 William street, N. Y. City. Due service of a copy of the within is hereby admitted. Dated, July 18th, 1904. Curie, Smith & Maxwell, attorneys for appellees. U. S. Circuit Court, Southern District of New York, filed Jul. 19, 1904. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
against
GEORGE RIGGS & CO., APPELLEES.

Specification of errors.

The United States hereby assigns error to the decision and judgment of the Circuit Court of the United States for the Southern District of New York herein, in the following particulars:

I. In that the said court reversed the decision of the Board of United States General Appraisers and the collector herein.

II. In that the said court held that the merchandise in said suit is not dutiable at the appropriate rates under the provisions of para-
43 graphs 306 and 307 of the tariff act of July 24th, 1897, and an additional duty of two cents per square yard thereon, under the provisions of paragraph 313 of said act, as assessed by the collector.

III. In that the said court sustained the protest of the importers herein.

IV. In that the said court did not affirm the decision of the collector and the Board of United States General Appraisers herein.

Dated New York, July 12th, 1904.

HENRY L. BURNETT,
In behalf of the United States, appellant,
Room 50, P. O. Building, New York City, New York.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, versus George Riggs & Co., appellees. Specification of errors. Henry L. Burnett, United States attorney. U. S. Circuit Court, Southern District of New York, filed Jul. 13, 1904. John A. Shields, clerk.

44 UNITED STATES OF AMERICA, *ss:*

To GEORGE RIGGS & CO., *Importers:*

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the city of New York, on the 11th day of August, 1904, pursuant to an appeal on the part of the United States, filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, appellant, vs. George Riggs & Co., appellees, 'A' No. 3412," to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, modified, or corrected, and speedy justice should not bo done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 14th day of July, 1904.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

HENRY L. BURNETT,
U. S. Attorney on behalf of the United States, appellant.

(Endorsed:) "A" suit No. 3412. U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, vs. George Riggs & Co., appellees. Citation. Henry L. Burnett, U. S. attorney. Due service of a copy of the within citation is hereby admitted. Dated July 18th, 1904. Curie, Smith & Maxwell, attorneys for appellees. To Curie, Smith & Maxwell, esqs., attorneys for appellees, 22 William street, N. Y. City. U. S. Circuit Court, Southern District of New York, filed Jul. 19, 1904. John A. Shields, clerk.

45 UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John A. Shields, clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to forty-five inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled The United States of America, Appellant, against George Riggs & Co., appellees (No. 3412), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 16th day of August, in the year of our Lord one thousand nine hundred and four, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL] JOHN A. SHIELDS, *Clerk.*

46 United States Circuit Court of Appeals for the Second Circuit.

No. 134. October term, 1904.

Argued January 31, 1905. Decided March 3, 1905.

THE UNITED STATES, APPELLANT, *vs.* GEORGE RIGGS & COMPANY, APPELLEES. [3412] } Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Coxe.

Appeal from the decision of the Circuit Court of the United States for the Southern District of New York, reversing a decision of the Board of United States General Appraisers which overruled the protest of the importers and sustained the action of the collector in assessing duty upon the merchandise in question, which consisted of figured cotton cloth, pursuant to the provisions of paragraphs 306, 307 and 313 of the tariff act of 1897.

The importers protested against the action of the collector, insisting that the "goods dutiable under paragraph 313 should pay only the specific rates therein provided, according to their value per square yard in addition to the specific rates provided in paragraphs 304–309 for cotton cloth of the same description or condition, weight and count of threads to the square inch. The ad valorem provisos of paragraphs 305–309 can not be applied to any goods assessed under paragraph 313, which

has an ad valorem classification of its own. The addition of the
47 specific rates imposed by paragraph 313 to the ad valorem rates of 30, 35, or 40 per cent. provided in paragraphs 305–309 is therefore unauthorized and illegal."

Paragraph 313 is as follows:

"Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

Paragraphs 306 and 307 provide for a specific duty upon the cotton cloth therein described, but at the end of each paragraph there is a proviso levying an ad valorem duty on such cloth if it exceeds a certain designated value per square yard.

Three of the items in controversy contain between 100 and 150 threads to the square inch, counting the warp and filling, and fall, therefore, under paragraph 306. The fourth item contains from 150 to 200 threads to the square inch, and falls under paragraph 307.

The opinion of the Board clearly states the facts as to the action of the collector and the contention of the importers, as follows:

"All the goods were assessed under the provisos to paragraphs 306 and 307 at 35 per centum ad valorem—the first and third items because they are colored and valued at over 12½ cents per square yard, the second because it was bleached and valued at over 11 cents per square yard, and the last one because it was bleached and valued at over 12 cents per square yard. There was also added a specific duty of 2 cents per square yard, as provided in paragraph 313.

48 "It is claimed by the importers that the provisos to paragraphs 306 and 307 are not to be considered in ascertaining the rate to which the additional duty is to be added, and, while it is conceded that the additional duty of 2 cents per square yard should be assessed, it is claimed that it should be added to the duty to be ascertained by classifying the goods under the body of the paragraph, the first three under paragraph 306 and the last under paragraph 307. It is further contended that the additional duty provided for by paragraph 313 can not be added to the duty provided for in the provisos to said paragraphs 306 and 307, because it is a specific duty, and the duty there provided for is an ad valorem duty."

The decision of the Circuit Court will be found reported in 131 Fed. Rep., 568.

COXE, Circuit Judge.

Paragraph 313 appears for the first time in the act of 1897 and we have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth

should pay a higher duty than the same cloth plain. But the legislative intent must be derived from the language employed, and unless it can be clearly ascertained from paragraph 313 that the collector was justified in assessing the merchandise under the provisos of the preceding paragraphs, the importers should succeed upon the principle that their money should not be taken from them upon a doubtful construction of the law.

It is the duty of Congress to make its meaning clear and if it fails to do so the citizen should not suffer.

When figured cotton cloth is imported it is the duty of the collector to turn to the paragraph of the law which specifically describes such cloth and proceed as there directed. This is paragraph 313. It
49 provides that figured cotton cloths shall pay, in addition to the duty provided elsewhere in the act "for cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard," etc. With these instructions before him the collector proceeds to ascertain, first, the description or condition of the goods, whether bleached or unbleached, etc.; second, the weight, and, third, the count of threads. Having found these facts he turns to the appropriate preceding paragraph to ascertain what duty is imposed on such cloth and finds that it is a specific duty of so much per square yard. His course is now clear. Having obtained all the information from the preceding section which the law requires he returns to paragraph 313 and finds that he is now required for the first time to ascertain the value of the goods for the purpose of levying duty under that paragraph, namely, whether valued at more or less than seven cents per square yard.

Assume that the imported merchandise is figured cotton cloth, bleached, containing 125 threads to the square inch and weighing five square yards to the pound, if the collector has no other data regarding it he will inevitably levy a specific duty of three cents per square yard under paragraph 306. He can not levy an ad valorem duty under the proviso until he knows what the value is, and he can not know that unless the law permits him to know it. In short, paragraph 313 has given him all the criteria which he is to use in ascertaining the duty under paragraph 306, and they do not include the value of the goods. If this omission be a mistake Congress can cure it, the courts can not.

It is said that the words of paragraph 313 "other cotton cloth goods of the same description" are broad enough to include value. We think this contention would be entitled to weight if the sentence had stopped with the words quoted, but it is manifest that Congress was not stating a broad, general comparison, but was giving in minute detail the
50 precise points of similarity which were to be taken into consideration. The omission of value from these is significant and can not be ignored. If Congress had intended the construction urged by the appellant it would have required only the addition of the word "value" after the word "weight," and we are unable to say that the omission may not have arisen from a desire to avoid the imposition of two duties upon the same article based upon the ad valorem standard.

Having found that paragraph 313 does not permit the value of the goods to be considered in fixing the original duty, we are not concerned with the effect which this interpretation may have upon other merchandise not involved in the present controversy. As before stated, such

considerations are not for the courts. The question is difficult and perplexing, but for the reasons above stated we are of the opinion that the contention of the appellees is well founded.

Decision affirmed.

D. Frank Lloyd, assistant United States attorney, for the appellant.
W. Wickham Smith, for the appellees.

51 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post-Office Building in the city of New York on the 13th day of March, one thousand nine hundred and five.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, circuit judges.

UNITED STATES, APPELLANT,
vs.
GEORGE RIGGS & COMPANY, APPELLEES.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said Circuit Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

W. J. W.
E. H. L.
A. C. C.

52 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. U. S. vs. Riggs & Co. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 13, 1905. William Parkin, clerk.

53 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 52, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of United States against Geo. Riggs & Co., as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 11th day of December, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and thirtieth.

[SEAL.] WM. PARKIN, *Clerk.*

54 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and hereby certified as a return to the writ of certiorari issued herein.

Dated New York, January 11th, 1906.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

55 Supreme Court of the United States, October term, 1905.

THE UNITED STATES, PETITIONER,
vs.
GEORGE RIGGS & COMPANY. } No. 516.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record therein now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

H. M. HOYT,
Solicitor-General.
W. WICKHAM SMITH,
Counsel for Respondents.

January 6, 1906.

(Endorsed:) U. S. vs. Riggs. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 11, 1906. William Parkin, clerk.

56 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is appellant and George Riggs & Company are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme
57 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the fourth day of January, in the year of our Lord one thousand nine hundred and six.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

58 (Indorsed:) File No. 20018. Supreme Court of the United States. No. 516, October term, 1905. The United States vs. George Riggs & Co. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 11, 1906. William Parkin, clerk.

59 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. United States v. Riggs & Co. Return to certiorari. Office of the clerk, Supreme Court, U. S. Received Jan. 13, 1906.

60 (Indorsed:) File No. 20018. Supreme Court U. S. October term, 1905. Term No. 516. The United States, petitioner, vs. George Riggs & Co. Writ of certiorari and return. Filed Jan'y 13, 1906.

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JAMES H. MCKENNEY

No. [redacted]167

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS. } No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, in behalf of the United States, respectfully prays for a writ of certiorari herein to bring up the case for review of the decree of the United States Circuit Court of Appeals for the Second Circuit, wherein it adjudged that figured cotton goods, dutiable under paragraph 313 of the tariff act of July 24, 1897, should pay only 1 or 2 cents per square yard as therein provided, in addition to the specific rates of paragraphs 306 and 307 for other cotton cloth of the same description or condition, weight, and count of threads; and that the ad valorem provisions of those sections applicable to all unfigured cottons above the values named were always to be ignored when computing rates upon figured material, irrespective of its value.

Under the rule laid down by the court, figured cotton goods manufactured at a much higher cost than plain may be entitled to entry at a decidedly lower rate.

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BRIEF IN SUPPORT OF THE PETITION.

I.

STATEMENT.

The matter involved is the classification of figured cloth under the tariff act of 1897, paragraph 313 of which prescribes that cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure shall pay, *in addition* to the duty provided by sections 304 to 309 for other cotton cloth of the same description, weight, and count of threads, 1 or 2 cents per square yard, according to value.

The Circuit Court of Appeals declared, "We have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth should pay a higher duty than the same cloth plain"—and then proceeded so to construe section 313 as to make it directly conflict with that purpose and defeat the manifest object of Congress. If its decision is correct, figured cotton cloth will pay much less duty than was intended, in many cases less than plain cotton cloth of the same general character, and not infrequently less than if the section providing *additional* duties (313) had not been enacted.

This peculiar result is supposed to arise from ambiguity in language; but if such ambiguity is present at all it disappears when the intention of Congress is considered.

Both the Government and domestic manufacturers are specially interested. The Secretary of the Treasury states that "there are approximately 5,080 suspended protests on file with the Board of United States General Appraisers covering the issue involved, and that the approximate refunds under the decision of the court are estimated to be $280,000." Future collections of revenue may be materially impaired, especially so, as foreign makers may introduce inconspicuous and inexpensive figures in fine cottons for the sole purpose of securing a lower rate of duty. In fact—so greatly has the purpose of paragraph 313 been distorted—the decision is equivalent to offering a bounty to foreign manufacturers to introduce a figure into plain goods.

The construction adopted by the court below, if not repudiated, will also defeat, in large measure, the purpose of Congress to give special encouragement to domestic manufacturers of figured cottons, and may seriously cripple that industry, which, under the protection heretofore supposed to exist, I am informed has grown into very considerable importance, giving employment to many people and large capital. Domestic manufacturers estimate that a product of $50,000,000 will be affected by this adverse decision. I am further advised that the use of expensive cottons has shown large increase in recent years and that the growth will probably continue.

The tariff act of July 24, 1897 (30 Stat., 176, 178), contains the following paragraphs, which constitute part of the countable provisions of the cotton schedule:

Par. 306. Cotton cloth, *not bleached, dyed, colored, stained, painted, or printed*, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; *if bleached*, and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; *if dyed, colored, stained, painted, or printed*, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth ex-

ceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, *not bleached, dyed, colored, stained, painted, or printed*, valued at over nine cents per square yard, thirty per centum ad valorem; *bleached*, valued at over eleven cents per square yard, thirty-five per centum ad valorem; *dyed, colored, stained, painted, or printed*, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

Par. 307. Cotton cloth, *not bleached, dyed, colored, stained, painted, or printed*, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square yards to the pound, three and one-half cents per square yard; *if bleached*, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square

yards to the pound, four and one-fourth cents per square yard; *if dyed, colored, stained, painted, or printed,* and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cents per square yard: *Provided,* That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, *not bleached, dyed, colored, stained, painted, or printed,* valued at over ten cents per square yard, thirty-five per centum ad valorem; *bleached,* valued at over twelve cents per square yard, thirty-five per centum ad valorem; *dyed, colored, stained, painted, or printed,* valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of forty per centum ad valorem.

Par. 310. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp or filling threads of which can be counted by unraveling or other practicable means.

Par. 313. Cotton cloth in which other than the ordinary warp and filling threads have been

introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The paragraphs in the tariff act of 1894 (28 Stat., 527–529), corresponding to 306, 307, and 310 and similar ones in the act of 1897, are numbered 252 to 257, inclusive.

The imports were cotton cloth in which other than the ordinary warp and filling threads had been introduced in the process of weaving to form a figure. The number of threads to the square inch, condition, and value per square yard are shown in the table following:

Item.	Case.	Count of threads.	Condition.	Value per square yard.
1561	2204	100–150	Colored	14½ cents, or over 12½ cents.
1431	2204	100–150	Bleached	11⅞ cents, or over 11 cents.
1	2206	100–150	Colored	13½ cents, or over 12½ cents.
N610	2209	150–200	Bleached	13½ cents, or over 12 cents.

Examination of the table, in connection with the provisions quoted, will show that the first three items fall under paragraph 306 and the last under 307. The collector liquidated the entry at 35 per cent ad

valorem, plus 2 cents per square yard, according to his construction of section 313.

The first, second, and third items contained between 100 and 150 threads to the square inch, and if unfigured would have been dutiable at 35 per cent under section 306. The fourth item contained between 150 and 200 threads, and if unfigured would have been dutiable at 35 per cent under section 307.

The importers claimed that under proper construction of section 313 the total duty should be computed by adding 2 cents per square yard to the specific duty prescribed by paragraphs 306 or 307 for plain cloth containing the same number of threads to the square inch and in the same condition—plain, colored, or bleached—as the goods in question; and that the ad valorem rates prescribed by the *provisos* of those sections were not to be considered. This contention was based on the wording of paragraph 313, the argument being that ad valorem duties necessarily depend upon value and that no mention was made of that element in the description of the unfigured cloth referred to in the language of the section which declares figured goods shall pay, "in addition to the duty herein provided for other cotton cloth of the same *description* or *condition*, *weight*, and *count of threads* to the square inch, one cent per square yard," etc.

The weights of these items are not given; but that is immaterial, because, as hereafter demonstrated, the specific duties would in any event be less than the ad valorem.

The Board of General Appraisers sustained the collector (R., 16–19). The Circuit Court reversed that decision (R., 20–21), and this was approved by the Circuit Court of Appeals (R., 25–27).

II.

The history of paragraph 313 makes its meaning clear.

The provisions in paragraph 313 were new legislation, appearing first in the act of 1897. Without that the countable provisions in the cotton schedule were in accord with the general plan observed in all tariff laws since 1883 and under which cotton cloth containing a certain number of threads to the square inch and not exceeding a given value per yard was dutiable at specified rates, and when above such value, at an ad valorem rate. (Act of 1883, 22 Stat., 505, 506; act 1890, 26 Stat., 591, paragraphs 344–348; act 1894, 28 Stat., 527, paragraphs, 252–257.)

In *Heddon* v. *Robertson* (151 U. S., 520, 526), instituted under the act of 1883, madras mull, a woven cotton cloth the groundwork of which was uniform and upon which were figures or patterns woven contemporaneously with the weaving of the fabric, was held dutiable under the countable provisions and not at the lower rate for manufactures of cotton not otherwise specifically provided for, as importers claimed. The court said: "The ornamentation placed upon the groundwork fabric does not change its character as cotton cloth subject to the countable clause of the statute." (*United States* v. *Albert*, 60 Fed., 1012.)

Paragraph 257, act of 1894, provides: "The term 'cotton cloth' or 'cloth,' wherever used in the fore-

going paragraphs of this schedule, shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy, or plain, not specially provided for in this act, the warp and filling threads of which can be counted by unraveling or other practicable means." Paragraph 310, act 1897, is to the same effect.

By the act of 1894 figured cotton cloth was clearly dutiable according to number of threads and value at either a specific or ad valorem rate under the same paragraphs as plain goods. And this would be true under the act of 1897 but for paragraph 313.

It is ordinarily much more expensive to manufacture figured goods than plain, and in pursuance of the well-known policy of the Dingley law we would reasonably expect to find therein a higher rate imposed upon the more expensive article. And for that very purpose paragraph 313 was added to the cotton schedule. The tax therein imposed is expressly stated to be "in addition to the duty herein [in this act] provided for other cotton cloth of the same description, etc."

In *Claflin* v. *United States* and *Mills* v. *United States* (109 Fed., 562, 564; affirmed 114 Fed., 257, 259), paragraph 313, act 1897, was construed to embrace figured cotton goods of the general character of those here in question. In neither of those cases was it disputed that the goods were dutiable at either the specific rates, or, if sufficiently valuable, at the ad valorem rates of the countable paragraphs. The importers contended that the figures were not produced in the manner required by paragraph 313. This was overruled, and now a new line of attack is being followed.

III.

It was unnecessary for identification of the duty intended to use the word "value" in describing the "other cotton cloth," referred to in paragraph 313.

Determination of "the duty herein [in this act] provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch," referred to in paragraph 313, necessarily depends upon its value according to the very terms of the countable paragraphs of the act; and there is nothing to show Congress intended an entirely different rule should be adopted when applying the new paragraph—313. Its language certainly necessitates no such thing, and its spirit is in conflict with that construction. The purpose of Congress was to impose additional duty, because of increased labor necessary to manufacture figured goods, in harmony with the policy pervading the entire cotton schedule, which consistently prescribes higher duty as values increase through fineness, bleaching, coloring, etc. The protective character of tariff laws and the policy of Congress to impose higher duties upon finer articles and to increase the same as additional processes enter into their manufacture have been frequently recognized. (*Arnold* v. *United States*, 147 U. S., 497, 498; *Tidewater Oil Co.* v. *United States*, 171 U. S., 219.)

In *Bensusan* v. *Murphy* (10 Blatchf., 530), relied upon by the importers, the statute prescribed a specific duty per gallon upon wine and in addition an ad valorem duty of 25 per centum upon wine when imported

in casks; if imported in bottles, "the same rate per gallon as wines imported in casks and an additional duty of 3 cents per bottle." Certain wine was imported in bottles and the collector assessed the specific duty per gallon, the advalorem duty at 25 per centum, and in addition 3 cents for each bottle. The court held the words "the same rate per gallon as wines imported in casks" referred only to the specific duty and did not include the ad valorem duty because "the latter can in no just sense be regarded as a rate per gallon."

In section 313 Congress did not provide figured cloth shall pay the same rate per square yard as "other cotton cloth of the same description," but that figured cotton cloth "shall pay in addition to *the duty* herein provided for other cotton cloth," etc.

The fact that the imposition of either 1 or 2 cents additional duty under paragraph 313 depends on whether the valuation is more or less than 7 cents shows no intention to ignore the ad valorem provisions of the countable paragraphs. It is entirely feasible to put both provisions into operation—they were intended to and do harmonize. The valuation of 7 cents is the lowest in the countable paragraphs (306) which necessitates ad valorem assessment, and doubtless for that reason the same figure was adopted and inserted in paragraph 313.

According to the construction asked by importers, figured goods, notwithstanding the *additional* payment required of them (313), could be brought in for less than plain goods. Illustrative exhibits were presented by the Government's examiner of cotton goods to show

that certain cotton cloths frequently imported would pay less duty than similar cloth of plain weave if the importers' contention prevailed. (R., 11–16.) The exhibits represented actual importations such as he was frequently called on to pass.

Illustrative Exhibit A–1 was plain cotton goods valued at 26 francs for 30 yards; Exhibit A–2, fancy woven goods "of the same description," valued at 92 francs for 30 yards. The duties upon the plain goods and also the estimated duties upon the fancy weaves, according to the conflicting theories, were shown to be as follows:

Total amount of duty per lineal yard, upon #1 (plain weave) at 35%, under proviso to 306.	8.78 cents.
Total amount of duty per lineal yard upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 4½ cents plus 2 cents.	7.95 cents.
Total amount of duty per lineal yard on #2 (fancy cloth) at 35% and 2 cents per square yard, as at present imposed by the Government.	23.15 cents.

Similar results were shown with respect to illustrative Exhibit B, Nos. 1 and 2, representing plain and dotted cloths of the same description.

Total amount of duty per meter upon #1 (plain weave) at 35%, under proviso to 306.	9.3 cents.
Total amount of duty per meter upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 3 cents plus 2 cents.	5.95 cents.
Total amount of duty per meter on #2 (fancy cloth) at 25% and 2 cents per square yard, as at present imposed by the Government.	16.81 cents.

The record does not show the weights of the present importations. It can not therefore be determined therefrom what is the exact difference between the ad valorem rates imposed and the specific rates claimed. That the latter would be less is of course sure.

Take the first item (No. 1561), colored cloth, containing 100 to 150 threads to the square inch. It is dutiable under paragraph 306, which provides specific rates for colored cloth ranging from $3\frac{1}{2}$ to $4\frac{1}{2}$ cents per square yard according to its weight. The value being $14\frac{1}{2}$ cents, the ad valorem duty of 35 per centum is 5+ cents—$1\frac{1}{2}$ cents more than the lowest and one-half cent more than the highest possible specific duty.

The second item (No. 1431), bleached cloth, containing 100 to 150 threads to the square inch, is also dutiable under paragraph 306, the specific rates provided thereby for bleached cloth ranging from $2\frac{1}{2}$ to $3\frac{3}{4}$ cents per square yard according to its weight. The value of this item being $11\frac{3}{8}$ cents, the ad valorem duty of 35 per centum is about 4 cents ($3\frac{97}{100}$).

The other items will figure out the same way.

It is also manifest that in the case of figured cotton cloth of slightly greater value than the items in question the ad valorem duty alone—to which such cloth would confessedly be subject but for paragraph 313—will be greater than the highest possible specific duty plus the additional charge provided by paragraph 313. In other words, the importers are contending for a rule which would make the *additional* duty operate by way of *subtraction*. With the increase in value of such

goods the difference would be accentuated. The following table, prepared by an expert in one of our large manufactories, further illustrates the situation:

"Comparison of duties on cotton cloth without extra figure and cotton cloth with extra figure as assessed by appraisers and also under decision of Circuit Court. Description: dyed, 6 to 8 yards to pound, 100 to 150 threads to square inch (see paragraph 306 and 313).

Cost per square yard.	Without figure, duty 35 per cent.	With figure, appraisers' assessment, 35 per cent and 2 cents.	With figure, Circuit Court decision, duty 4½ cents and 2 cents.
Cents.	*Cents.*	*Cents.*	*Cents.*
13	4.55	6.55	6½
15	5.25	7.25	6½
18	6.30	8.30	6½
20	7	9	6½
25	8.75	10.75	6½
30	10.50	12.50	6½
35	12.25	14.25	6½
40	14	16	6½

"Above shows that the duty under Circuit Court decision on figured cloth is less than on plain cloth above 18 cents cost per square yard, and on goods costing 30 cents per square yard is only half what it should be as assessed by appraisers."

IV.

The rule that duties should not be imposed upon vague or doubtful interpretations is inapplicable.

The Board of General Appraisers, in its opinion, said (R., 18):

> It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind, it is hardly conceivable that

> Congress intended to enact paragraph 313 and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importers' contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.
>
> It must be remembered that this is an additional duty, levied regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list, providing for 1 cent per yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additional duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

Because they thought the question involved a doubtful one the courts decreed in favor of the importer. The Circuit Court of Appeals, however, declared in effect they little questioned that the real purpose of Congress was not in harmony with the conclusion which they reached. (R., 26.) The intention of Congress being clear, any ambiguity of language should have been resolved in harmony therewith. "The in-

tent of the lawmaker is the law." (*Jones* v. *Guaranty and Indemnity Co.*, 101 U. S., 626.)

Where the intent is plain the law should be construed in harmony therewith. Every doubt or dispute is not to be resolved in favor of the importer. (*Newman* v. *Arthur*, 109 U. S., 132; *Heddon* v. *Robertson*, 151 U. S., 520.)

In *United States* v. *Wetherell* (65 Fed., 987, 990) the Circuit Court of Appeals of the First Circuit overruled the defense bottomed on the constantly advanced doctrine that "duties are never to be imposed upon vague or doubtful interpretations," and said in reference thereto:

> The rule has received no practical construction by the Supreme Court, so far as decisions of that court have been brought to our attention. The first case was *United States* v. *Isham* (17 Wall., 496), which related to the question whether a certain instrument was subject to a stamp duty or not; and, although the court stated generally the rule relied on by the present importer, it disposed of the case without coming to any application of it. The next was *Hartranft* v. *Wiegmann* (121 U. S., 609). This raised a question as between free and dutiable goods; but the court concluded that the decision of the Circuit Court was correct, and continued: "But, if the question were one of doubt, the doubt would be resolved in favor of the importer." The court did not go beyond the hypothesis, so that it had no occasion to apply the rule under consideration. In like manner, in

the well-known case of *Twine Co.* v. *Worthington* (141 U. S., 468), the court, on page 474, said that the intention of Congress was plain. This, of course, was enough to end the litigation. *Earnshaw* v. *Cadwalader* (145 U. S., 247) turned on an issue for the jury. The court merely stated the ordinary rule that the jury must be satisfied by a preponderance of evidence, and that the case was not within the earlier ones to which we have referred. *There can be no question as to the general proposition; yet, like all rules of construction of a similar character, we presume it has no practical use except in cases of extraordinary doubt.* It has a more appropriate application when the question is one of any tax at all; *and the Federal reports are full of suits where the courts have not hesitated to perform the duty of determining mere questions of classification where it was admitted some duty was to be imposed, in favor of the higher rate, under circumstances of great difficulty.*

In view of the importance of the issue and what appears to be a manifest error by the court below, I respectfully ask that the writ of certiorari be granted.

HENRY M. HOYT,
Solicitor-General.

J. C. MCREYNOLDS,
Assistant Attorney-General.

December, 1905.

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FILE COPY.

Office Supreme Court U. S.
FILED
JAN 27 1906
JAMES H. McKENNEY,
Clerk.

No. [redacted]167

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS. } No. 516.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, moves the court to advance the above-entitled cause on the docket for early hearing.

The question involved is the classification of figured cotton cloth under the tariff act of 1897. Upon petition of the United States a writ of certiorari was granted on January 2nd, 1906, and to that reference is made for a more detailed account of the matters involved.

The case is intended as a test one. There are now in the office of the Board of United States General Appraisers over six thousand protests in which decision is suspended awaiting the final determination of this cause; and more than two hundred protests are being added each month. That Board is exceedingly anxious to clear up its dockets, and early action by the court will materially aid it in so doing.

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The petition for certiorari pointed out that the question involved affects domestic manufacturers producing an estimated annual product worth fifty million dollars, and it is highly important to them, and others who may desire to produce similar goods, that they be definitely advised as early as may be what the law is. If the duty now being collected is too high the interest of consumers will be subserved by an early adjudication to that effect.

I submit that the case is one which merits the consideration of the court at the present term.

Notice of this motion has been given to counsel for the respondents.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY.

Office Supreme Court, U. S.
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No. 167.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, PETITIONER,

v.

GEORGE RIGGS & CO., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS. } No. 167.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a customs case requiring construction of paragraph 313 of the last tariff act, which applies to figured cotton cloth.

The question involved is of importance to the Government's revenues and of great consequence to domestic manufacturers of a rapidly increasing product, now estimated to be worth fifty million dollars per annum.

The following paragraphs are parts of the cotton schedule, tariff act July 24, 1897 (30 Stat., 175–178):

> 304. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, and

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not exceeding fifty threads to the square inch, counting the warp and filling, one cent per square yard; if bleached, one and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, two cents per square yard.

305. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding fifty and not exceeding one hundred threads to the square inch, counting the warp and filling, and not exceeding six square yards to the pound, one and one-fourth cents per square yard; exceeding six and not exceeding nine square yards to the pound, one and one-half cents per square yard; exceeding nine square yards to the pound, one and three-fourths cents per square yard; if bleached, and not exceeding six square yards to the pound, one and one-half cents per square yard; exceeding six and not exceeding nine square yards to the pound, one and three-fourths cents per square yard; exceeding nine square yards to the pound, two and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding six square yards to the pound, two and three-fourths cents per square yard; exceeding six and not exceeding nine square yards to the pound, three and one-fourth cents per square yard; exceeding nine square yards to the pound, three and one-half cents per square yard: *Provided*, That on all cotton cloth not exceeding one hundred threads to the square inch, counting the warp and fill-

ing, not bleached, dyed, colored, stained, painted, or printed, valued at over seven cents per square yard, twenty-five per centum ad valorem; bleached, valued at over nine cents per square yard, twenty-five per centum ad valorem; and dyed, colored, stained, painted, or printed, valued at over twelve cents per square yard, there shall be levied, collected, and paid a duty of thirty per centum ad valorem.

306. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; if bleached and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding four square yards to the

pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over nine cents per square yard, thirty per centum ad valorem; bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

307. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square

yards to the pound, three and one-half cents per square yard; if bleached, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square yards to the pound, four and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over ten cents per square yard, thirty-five per centum ad valorem; bleached, valued at over twelve cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be

levied, collected, and paid a duty of forty per centum ad valorem.

308. [This applies to cotton cloth of 200–300 threads and imposes a minimum specific duty of 3½ cents per square yard and an ad valorem duty of 40 per centum.]

309. [This applies to cotton cloth exceeding 300 threads and imposes a minimum specific duty of 4 cents per square yard and an ad valorem duty of 40 per centum.]

310. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp and filling threads of which can be counted by unraveling or other practicable means.

311, 312. [Irrelevant.]

313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

Paragraphs 304, 305, 306, and 307, act 1897, are identical with paragraphs 252, 253, 254, and 255, tariff act 1894.

Paragraph 308, act 1897, takes the place of paragraph 256, act 1894. It, however, applies only to cloth of 200–300 threads, instead of wherever they exceed 200; and it increased the minimum specific duty from 3 to 3½ cents per square yard and the ad valorem from 35 to 40 per centum.

Paragraph 309, act 1897, has no corresponding one in the earlier act, and it imposes specific and ad valorem rates materially higher.

Nothing in the act of 1894 corresponds to paragraph 313, act 1897.

The imports—four items—were cotton cloth in which other than ordinary warp and filling threads had been introduced in weaving to form a figure. The number of threads, condition, and value are shown in the following table:

Item.	Case.	Count of threads.	Condition.	Value per square yard.
1561	2204	100–150	Colored	14½ cents or over 12½ cents.
1431	2204	100–150	Bleached	11½ cents or over 11 cents.
1	2206	100–150	Colored	13½ cents or over 12½ cents.
N610	2209	150–200	Bleached	13½ cents or over 12 cents.

The first, second, and third items contained 100–150 threads per inch, and if unfigured would have been dutiable at 35 per centum under paragraph 306. The fourth item contained 150–200 threads, and if unfigured would have been dutiable at 35 per centum under paragraph 307.

The collector classified the goods under paragraph 313 and liquidated the entry at 35 per cen-

tum ad valorem, as provided by paragraphs 306 and 307, plus the 2 cents additional specifically imposed by 313. The Government maintains the collector's action was correct. The purpose of 313 was to impose an additional burden on figured goods by adding 1 or 2 cents per yard to the duty, specific or ad valorem, prescribed by the applicable preceding part of the schedule, and in any reckoning consideration must necessarily be given to the ad valorem provisions and not only to specific rates.

Respondents admit the imports were properly classed under paragraph 313, but claim that the amount payable should be computed by adding 2 cents per square yard to the specific duties imposed by paragraphs 306 and 307 on plain cloth of the same weight, description, or condition—plain, colored, or bleached—and number of threads, and that the ad valorem rates specified in the provisos of those paragraphs are wholly inapplicable. This is based on the wording of 313—the argument being that ad valorem duties necessarily depend upon value, of which element no mention is made in the language which declares figured goods shall pay, "in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard," etc.

The record does not disclose the weight of the imports. That, however, is immaterial, since the specific duties, in reckoning which alone weight

is considered, would in any event be less than the ad valorem according to the appraised values.

The Board of General Appraisers sustained the collector (R., pp. 14–19). The Circuit Court, adopting the construction advanced by the importers, reversed the Board (R., pp. 19–21), and the Circuit Court of Appeals affirmed the decree (R., pp. 23–27).

ARGUMENT.

I.

The history of tariff legislation and the connection in which it appears make the meaning of paragraph 313 sufficiently clear.

The provisions of paragraph 313 appeared *first* in the act of 1897. The countable clauses in the cotton schedule of that act follow the plan observed in all tariff laws since 1883, according to which cloth containing a specified number of threads and not exceeding a given value has been dutiable at specific rates, and when above such value at ad valorem rates. (Act 1883, 22 Stat., 505, 506; act 1890, 26 Stat., 591, par. 344–348; act 1894, 28 Stat., 527, par. 252–257.)

In *Hedden* v. *Robertson* (151 U. S., 520, 526) (Feb. 5, 1894) madras mull, a cloth of uniform groundwork upon which figures or patterns were woven contemporaneously with the fabric, was held dutiable under the countable provisions, act 1883, and not as a manufacture of cotton not otherwise specifically provided for. "The ornamentation

placed upon the groundwork of the fabric does not change its character as cotton cloth, subject to the countable clause of the statute." (*United States* v. *Albert*, 60 Fed., 1012.)

Paragraph 257, act of 1894, removed the doubt on this subject by providing: "The term 'cotton cloth' or 'cloth' wherever used in the foregoing paragraphs of this schedule shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy, or plain, not specially provided for in this act, the warp and filling threads of which can be counted by unraveling or other practicable means." [Par. 310, act 1897, is substantially the same.]

The act of 1894 made figured cottons dutiable at either a specific or ad valorem rate, according to number of threads and value, under the paragraphs applicable to plain goods. And the same would be true of the 1897 act but for 313.

The well-known policy of the Dingley law was to lay highly protective duties and to increase the charge as articles became more expensive. This purpose is illustrated by the material advance in the rates of paragraph 308 over those of the corresponding one (256), act of 1894, and the introduction of the new paragraph (309) applicable only to the finest qualities.

Paragraph 313 was added in pursuance of the general design in order to lay a burden on imported figured goods "in addition to the duty herein (in this act) provided for other cotton cloth of the same description," etc. Ordinarily figured

goods are decidedly more expensive to manufacture than plain, and a higher rate on them harmonizes with the policy of the lawmakers.

When the tariff act of 1897 passed the House of Representatives paragraph 310 was identical with paragraph 313 as finally enacted, except the words "or condition" did not appear therein. The Senate struck out the word "description" and substituted "condition." The conference committee restored the word "description" and put in "or" before "condition."

In *Claflin* v. *United States* and *Mills* v. *United States* (109 Fed., 562, 564; affirmed 114 Fed., 257, 259,) paragraph 313, act of 1897, was construed to embrace figured cottons similar to those in question. In neither case was it denied that the goods were dutiable either at the specific rates or, if sufficiently valuable, at the ad valorem rates of the countable paragraphs. The importers contended that the figures were not produced in the way contemplated. This was overruled, and now another line of attack is being followed.

II.

The amount and character of the duty imposed is made sufficiently manifest by the language of paragraph 313; the use of the word "value" was unnecessary.

"The duty herein (in this act) provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch," referred to in paragraph 313, depends upon value

according to the plain provisions of the cotton schedule. It is impossible to apply the countable clauses without considering the element of value.

The countable paragraphs first prescribe specific duties and then, in provisos, ad valorem rates where prices exceed a given amount. Manifestly each one must be read and treated as a whole, the proviso being given weight along with the other part; and they must be construed as tho the first sentence declared that all described goods worth so much or less shall pay specific rates; if worth more, ad valorem. It is therefore absolutely necessary to know the value of any article before the amount of duty can be determined. This, of course, Congress appreciated, and having directed the use of a well-understood method, deemed it unnecessary specifically to point out that the thing essential to operating under it should be ascertained and utilized. Direction to do a thing includes the use of all necessary means. It would be senseless to say that one commanded to unlock a door could not use the key because the command did not contain the word key.

For many years prior to 1897 duties levied upon cottons were specific or ad valorem according to values, and the act of that year followed the old plan. No adequate reason appears for holding that paragraph 313 alone of all the cotton schedule requires something different. Its language does not necessitate this, and such construction would violate the spirit of the whole act.

The evident purpose of Congress was to impose an additional burden upon figured goods because of the great labor essential to their manufacture, in harmony with the policy pervading the entire cotton schedule which consistently prescribes higher rates as values increase thru fineness, bleaching, coloring, etc. The protective character of tariff laws and the policy of Congress to impose higher duties upon finer articles and to increase the same as additional processes enter into their manufacture have been frequently recognized. (*Arnold* v. *United States*, 147 U. S., 497, 498; *Tidewater Oil Co.* v. *United States*, 171 U. S., 219.)

Respondents rely upon *Bensusan* v. *Murphy* (10 Blatchf., 580; Fed. Cas., 1329). The statute there construed prescribed a specific duty per gallon upon wine, and in addition an ad valorem charge of twenty-five per cent, when imported in casks; if imported in bottles, "the same rate per gallon as wines imported in casks and an additional duty of 3 cents per bottle." The collector assessed the prescribed specific duty per gallon, ad valorem duty at 25 per centum, and 3 cents for each bottle. The court held "the same rate per gallon as wines imported in casks" referred only to the specific duty and that the ad valorem charge was unauthorized because "the latter can in no just sense be regarded as a rate per gallon." The opinion—by Shipman, district judge—I submit was erroneous. The court said, however, that Congress would have imposed both specific and ad

valorem duties "by simply in so many words subjecting wine in bottles to the same rates of duty as wine in casks." In the present case the language is, "shall pay in addition to the duty herein provided for other cotton cloth," etc., and this seems quite sufficient to meet Judge Shipman's views.

Because paragraph 313 makes 7 cents the dividing line between an additional charge of 1 or 2 cents shows no purpose to ignore the ad valorem rates of the countable paragraphs. It is entirely feasible to put all the provisions in operation. They were intended to, and do, harmonize. A valuation of over 7 cents is the lowest (par. 305) which necessitates an ad valorem assessment, and probably for that reason the same figure was inserted in 313 as the point of demarcation between the 1 and 2 cent specific tax.

III.

The construction of paragraph 313 advocated by respondents would subject high-priced figured cottons to less duty than cheaper plain goods—an absurd result which should be avoided.

Illustrative exhibits representing actual importations such as he frequently examined were presented by the Government agent to show that many figured cottons would be dutiable at a lower rate than similar cloth of plain weave, if respondents' contention prevails. (R., 10–11.)

Exhibit B, Nos. 1 and 2, represented plain and dotted cottons of the same general description.

(R., 11, 13.) The estimated duties thereon, according to the different constructions, follow:

Total amount of duty per meter upon #1 (plain weave) at 35%, under proviso to 306.	9.3 cents.
Total amount of duty per meter upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 3 cents per yard plus 2 cents.	5.95 cents.
Total amount of duty per meter on #2 (fancy cloth) at 25% and 2 cents per square yard, as at present imposed by the Government.	16.81 cents.

The record does not disclose the weights of the imports in question, and therefore the actual amount of duty, if specific rates be applied, can not be determined, but they would certainly occasion smaller payment than the ad valorem ones.

Item No. 1561 (*ante*, p. 7), colored cloth containing 100 to 150 threads, valued at 14½ cents, requires application of paragraph 306, with specific rates for colored cloth from 3½ to 4½ cents per square yard, according to weight. Thirty-five per centum ad valorem upon valuation of 14½ cents is 5+ cents—one-half cent above the highest specific duty.

Item No. 1431 (*ante*, p. 7), bleached cotton with 100 to 150 threads, also requires application of paragraph 306, with specific rates for bleached

cloth from $2\frac{1}{2}$ to $3\frac{3}{4}$ cents. Thirty-five per centum ad valorem upon a valuation of $11\frac{3}{8}$ cents is $3\frac{97}{100}$ cents. [The other items would show like results.]

Upon figured cottons somewhat more valuable than the items in question the ad valorem duties alone—to which admittedly they would be subject but for paragraph 313—would be materially greater than the highest prescribed specific duty plus 2 cents. Respondents are contending for an interpretation which, instead of imposing additional duties upon figured goods, would bring about exactly the opposite result.

The following table, prepared by an expert in a large manufactory, further illustrates the matter:

> Comparison of duties on cotton cloth without extra figure and cotton cloth with extra figure as assessed by appraisers and also under decision of Circuit Court. Description: Dyed, 6 to 8 yards to pound, 100 to 150 threads to square inch (see paragraph 306 and 313).

Cost per square yard.	Without figure, duty 35 per cent.	With figure, appraisers' assessment, 35 per cent and 2 cents.	With figure, Circuit Court decision, duty 4¼ cents and 2 cents.
Cents.	*Cents.*	*Cents.*	*Cents.*
13	4.55	6.55	6¼
15	5.25	7.25	6¼
18	6.30	8.30	6¼
20	7	9	6¼
25	8.75	10.75	6¼
30	10.50	12.50	6¼
35	12.25	14.25	6¼
40	14	16	6¼

The table shows that the duty under Circuit Court decision on figured cloth is less than on plain cloth above 18 cents cost per square yard, and on goods costing 30 cents per square yard is only half what it should be as assessed by appraisers.

IV.

The countable provisions of the cotton schedule, referred to in paragraph 313, do not permit assessment of specific duties on goods exceeding in value the stated amounts. Unless that paragraph authorizes ad valorem rates on high-priced figured cottons they are dutiable at not more than 2 cents a yard.

The countable provisions clearly provide for specific duty *only* upon cloth not exceeding a certain value, and when the valuation is greater ad valorem duties *only* are imposed. There is, e. g., no provision of law authorizing a specific duty upon cotton containing 100–150 threads, valued at 14½ cents—Item No. 1561, *ante*, p. 7. To assess that item under paragraph 313, construing it according to respondents' contention, would necessitate application of the specific duty of paragraph 306 to an article so valuable as not to be subject to such duty at all.

Paragraph 306 authorizes an ad valorem duty *only*, when the value exceeds from 9 to 12½ cents according to condition. When there are 100–150 threads to the inch, paragraph 313 imposes the rate prescribed in paragraph 306, plus 2 cents, and nothing else. And where the number of threads is different the same is true of other paragraphs. Unless, therefore, the ad valorem provisions of the

countable clauses apply, 2 cents is the maximum which can be collected on any figured cotton cloth exceeding in value the figures at which specific duties stop, viz, 7 to 12½ cents. A result so preposterous plainly indicates the unsoundness of the construction which would occasion it. (*Bate R'f'g Co.* v. *Sulzberger*, 157 U. S., 1-37; *Knowlton* v. *Moore*, 178 U. S., 41–77.)

V.

The rule that duties should not be imposed upon vague or doubtful interpretations is inapplicable.

The Board of General Appraisers said (R., 17):

> It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind it is hardly conceivable that Congress intended to enact paragraph 313, and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importers' contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.
>
> It must be remembered that this is an additional duty, levied regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list, providing for 1 cent per

> yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additional duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

Because the question involved seemed a doubtful one, the courts decreed in favor of the importers. The Circuit Court of Appeals, however, declared (R., 24):

> We have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth should pay a higher duty than the same cloth, plain.

The intention of Congress being clear, any ambiguity of language should have been resolved in harmony therewith. Little doubts do not justify conclusions nullifying the manifest purpose of the lawmakers. "The intent of the lawmaker is the law." (*Jones* v. *Guaranty and Indemnity Co.*, 101 U. S., 626.)

Where the intent is plain the law should be construed in harmony therewith. Every doubt or dispute is not to be resolved in favor of the importer. (*Newman* v. *Arthur*, 109 U. S., 132; *Heddon* v. *Robertson*, 151 U. S., 520.)

In *United States* v. *Wetherell* (65 Fed., 987, 990) the Circuit Court of Appeals of the First Circuit overruled the defense bottomed on the constantly advanced doctrine that "duties are never to be imposed upon vague or doubtful interpretations," and said in reference thereto:

> The rule has received no practical construction by the Supreme Court, so far as decisions of that court have been brought to our attention. The first case was *United States* v. *Isham* (17 Wall., 496), which related to the question whether a certain instrument was subject to a stamp duty or not; and altho the court stated generally the rule relied on by the present importer, it disposed of the case without coming to any application of it. The next was *Hartranft* v. *Wiegmann* (121 U. S., 609). This raised a question as between free and dutiable goods; but the court concluded that the decision of the Circuit Court was correct, and continued: "But, if the question were one of doubt, the doubt would be resolved in favor of the importer." The court did not go beyond the hypothesis, so that it had no occasion to apply the rule under consideration. In like manner, in the well-known case of *Twine Co.* v. *Worthington* (141 U. S., 468) the court, on page 474, said that the intention of Congress was plain. This, of course, was enough to end the litigation. *Earnshaw* v. *Cadwalader* (145 U. S., 247) turned on an issue for the jury. The court merely stated the ordinary rule

that the jury must be satisfied by a preponderance of evidence, and that the case was not within the earlier ones to which we have referred. *There can be no question as to the general proposition; yet, like all rules of construction of a similar character, we presume it has no practical use, except in cases of extraordinary doubt.* It has a more appropriate application when the question is one of any tax at all; *and the Federal reports are full of suits where the courts have not hesitated to perform the duty of determining mere questions of classification, where it was admitted some duty was to be imposed, in favor of the higher rate, under circumstances of great difficulty.*

I respectfully ask a reversal of the decree below.

J. C. McREYNOLDS,
Assistant Attorney-General.

OCTOBER, 1906.

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FILE COPY. No. [redacted] 167

IN THE

Supreme Court of the United States.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1905.

THE UNITED STATES,

Petitioner,

v.

GEORGE RIGGS & CO.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CHARLES CURIE,
W. WICKHAM SMITH,
Attorneys for Respondents.

W. WICKHAM SMITH,
Counsel.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, Petitioner, vs. GEORGE RIGGS & CO., Respondents.	No.

BRIEF FOR RESPONDENTS.

Statements outside of the record.

I respectfully suggest that the practice of basing applications to this Court for writs of *certiorari* on statements of fact not based on anything in the record is one that is not to be commended, even when the moving party is so distinguished an officer as the Solicitor General of the United States.

I beg to call attention to the following paragraph in petitioner's brief:

> "The construction adopted by the Court below, if not repudiated, will also defeat, in large measure, the purpose of Congress to give special encouragement to domestic manufacturers of figured cottons, and may

> seriously cripple that industry, which, under the protection heretofore supposed to exist, I am informed has grown into very considerable importance, giving employment to many people and large capital. Domestic manufacturers estimate that a product of $50,000,000 will be affected by this adverse decision. I am further advised that the domestic use of expensive cottons has shown large increase in recent years, and that the growth will probably continue.

There is, of course, nothing on this subject in the record, and I respectfully submit that such statements should not be made part of applications of this character. If they were to be contradicted or denied by counsel for the respondents there would be no way of the Court determining which statements were correct; and if, on the other hand, such statements are to be treated as proper when coming from counsel for the Government and improper when made by counsel for the citizen, such a view does not seem consistent with evenhanded justice.

Laches.

The Court will find, by reference to the published report of the decision of the Court of Appeals in this case (136 Fed. Rep., 583), that the decision of that Court was handed down on the 3d day of March, 1905. The present application is noticed for the 18th of December, 1905. The interval is over nine months. This Court did not adjourn for the summer at the conclusion of its last term until the 29th day of May, and according to my calculation there were eleven Mondays after March 3d and before the adjournment of the Court at which petitions for writs of *certiorari* could have been submitted. There must have been almost as many since the opening of the present Term. The Customs Administrative Act of 1890 was passed to expedite the settlement of disputed questions of customs law. At the time of its enact-

ment the act creating the Circuit Court of Appeals had not been passed. The spirit and intent of the legislation is therefore indicated by Section 15 of the Customs Administrative Act, which limited the time of the Attorney General to appeal from a decision of the Circuit Court to thirty days, and which provided as to all courts passing on customs cases that they should give priority to such cases. How much of the $280,000 excessive duties collected, and how many of the 5,080 protests, referred to by the Solicitor General in his statement, are covered by the period of nine months since the Court of Appeals decided this question must be left to conjecture, as we do not feel justified in following what we must regard as a bad example, even when set by so eminent an authority as the learned Solicitor General.

It is true that in the case of *The Conquerer*, 166 U. S., at p. 110, this Court decided that:

> "It would seem that he (the party complaining) is, by analogy, entitled to the year within which, by Section 6, an appeal shall be taken or writ of error sued out from this Court, to review judgments or decrees of the Court of Appeals in cases where the losing party is entitled to such review."

But in that case the decree below had been entered immediately after this Court had adjourned for the term and the application was made during the next term. The Court said it thought such application should be made with reasonable promptness, and we submit that in this case it has not been made with reasonable promptness. While under the decision quoted the present application may not be denied because the time within which it might be made had expired, we think the delay in making it is a circumstance which the Court may properly take into consideration in determining whether merchants importing staple lines of merchandise shall find questions of customs law (as to which the decisions

of the Court of Appeals are as final as they are on any subject), reopened and litigation prolonged after more than nine months has expired since the Court of Appeals decided them.

Reasons assigned for the application.

Substantially the only reasons assigned for this application are, 1st, that the Government wants it; 2d, that the domestic manufacturers want it, and 3d that, the decision of the Court of Appeals is opposed to an assumed intent of Congress. We submit that none of these constitute sufficient reason for the application. If either of the first two be a sufficient reason then every customs case may come to this Court, as defeated litigants usually desire further appeals, and any construction favorable to the importer is apt to conflict with the desires and interests of domestic manufacturers.

As to the third reason assigned, we submit that the only question properly before this Court is whether the decision of the Court below is in accordance with the plain language of the statute. If it is, and it is contended that Congress meant to do something different from what it did, the remedy as very properly intimated by the Court of Appeals in its opinion, is in Congress and not in the Courts.

The argument based on so-called illustrative samples.

The learned Solicitor General says in his brief:

> "Illustrative exhibits were presented by the Government's Examiner of cotton goods to show that certain cotton cloth frequently imported would pay less duty than similar cloth of plain weave if the importer's contention prevailed. The exhibits represented actual importations such as he was frequently called on to pass."

In regard to this, we ask the Court to note in the record that when these samples were produced the Examiner was asked (p. 25, fol. 75) to state who imported the article, and declined to answer the question, in which refusal he was sustained by the Board of General Appraisers. We respectfully submit that under these circumstances the samples produced by him were entitled to no consideration in a judicial proceeding, as no opportunity was afforded the importer to investigate and determine whether the samples were actual and ordinary importations, or whether they were goods specially manufactured for use as samples. Little attention was given to these samples in the Court below, which said:

> "We are not concerned with the effect which this interpretation may have upon other merchandise not involved in the present controversy. As before stated, such considerations are not for the courts."

It is not contended by the Solicitor General that as to the goods involved in this case the duties claimed by the importer are less than 35 per cent., ad valorem. And not only are no other goods before the Court, but all statements as to other goods are pure assertions of matters outside of the record, or (as to the so-called illustrative samples) improperly in the record.

We respectfully submit that the Court is not concerned with what effect upon particular pieces of goods that have been or may be manufactured any given construction of the Tariff paragraphs may result in. As said by Judge Shipman in the case of Claflin *v.* U. S. (52 Fed. Rep., 121):

> "It is argued that it is unreasonable to suppose that Congress intended to impose a higher duty upon cotton handkerchiefs having a plain cheap hem than upon those which were prevented from raveling in a more ornamental and expensive manner. It is true that the construction makes apparent a lack of symmetry in the rates of duty, but the

> Court cannot attempt to adjust into symmetry the various provisions of a statute, &c."

The only question for consideration is what the language of the taxing law calls for. If that is to be abandoned, and every Tariff case is to be decided upon what the effect of any particular decision would be on illustrative samples, the courts will be completely at sea, and no merchant can know what the duty on any merchandise will be.

The proper construction of the statutes involved.

As to this point the subject is so admirably, lucidly and convincingly presented in two paragraphs of the able opinion of Judge Coxe in the Court below, that we content ourselves with reprinting those here as effectually answering every argument contained in the Government's brief. They are as follows:

> "Assume that the imported merchandise is figured cotton cloth, bleached, containing 125 threads to the square inch, and weighing five square yards to the pound, if the Collector has no other data regarding it he will inevitably levy a specific duty of three cents per square yard under paragraph 306. He cannot levy an *ad valorem* duty under the proviso until he knows what the value is, and he cannot know that unless the law permits him to know it. In short, paragraph 313 has given him all the criteria which he is to use in ascertaining the duty under paragraph 306, and they do not include the value of the goods. If this omission be a mistake, Congress can cure it, the Courts cannot
>
> It is said that the words of paragraph 313, 'other cotton cloth of the same description,' are broad enough to include value. We think this contention would be entitled to weight if the sentence had stopped with the words quoted, but it is manifest that Congress was not stating a broad, general comparison,

but was giving in minute detail the precise points of similarity which were to be taken into consideration. The omission of value from these is significant and cannot be ignored. If Congress had intended the construction urged by the appellant it would have required only the addition of the word 'value' after the word 'weight,' and we are unable to say that the omission may not have arisen from a desire to avoid the imposition of two duties upon the same article based upon the *ad valorem* standard."

The petition should be denied.

Dated New York, December 18, 1905.

CHARLES CURIE,
W. WICKHAM SMITH,
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Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1906.
No. 167.

THE UNITED STATES,
Petitioner,

vs.

GEORGE RIGGS & CO.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENTS.

W. WICKHAM SMITH,
JOHN K. MAXWELL,
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Counsel.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1906.

THE UNITED STATES, Petitioner, vs. GEORGE RIGGS & Co., Respondents.	No. 167.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for the Respondents.

In the case of Arthur *vs.* Morrison (96 U. S., 108), this Court said:

> "Importations from foreign countries are necessarily made with reference to the duties to be paid upon their entry into the ports of this country. If these are not reasonably uniform, and cannot be ascertained, the transaction of business will be impossible. No man can determine whether his venture will enrich him, or make him a bankrupt."

The respondents in this case imported cotton cloths which contained threads other than the ordinary warp and filling threads introduced

in the process of weaving for the purpose of forming a figure. In modern commerce, goods are frequently manufactured in Europe in accordance with orders accepted and contracts for delivery made in this country before the goods were manufactured; so that, in many instances at the time of taking contracts for goods to be manufactured and imported, and in every instance at least at the time of importation and entry, the importer has to know under what dutiable category his goods will fall. When the importers examined the Tariff Act in force at the time of the importations and for a number of years theretofore, they found the goods that they imported provided for in paragraph 313, and they look to that in the first instance to find what is the duty on their goods. From that paragraph they learn that all goods of this character pay a duty of one or two cents per square yard (according to whether they are valued at 7 cents a square yard or more) in addition to the duty provided in the cotton schedule for other cotton cloth of the same description, or condition, *weight* and count of threads to the square inch. They knew that all their goods were valued at more than 7 cents per square yard, and therefore the additional duty provided for their goods in paragraph 313 was two cents per square yard. They knew the description or condition of their goods, viz., that some of them were bleached and some of them were colored. They knew the weight, and they knew that some of the bleached goods contained between 150 and 200 threads to the square inch, and that all the others contained between 100 and 150 threads to the square inch. In paragraph 306 they found certain specific duties provided for bleached cottons containing between 100 and 150 threads to the square inch, according to their weight, and certain specific duties provided for colored cottons within the same range of count, according to their weight, and in paragraph 307 specific duties for bleached cottons containing between 150 and 200

threads to the square inch, according to their weight. They now had all the data upon which to compute the duty on their goods. They had the ad valorem rate of two cents provided by paragraph 313, and the foundation rates provided by paragraphs 306 and 307 for goods of the same description or condition, *weight* and count of threads to the square inch. Taking the specific duties found in paragraphs 306 and 307, and adding to them two cents, as required by paragraph 313, they had the duty fixed by law upon their goods, on which they had a right to rely in contracting for them, and in entering and selling them, and when the Collector ascertained the same things he had all the basis necessary for assessing duty upon the goods, as the Circuit Court and the Circuit Court of Appeals have both decided.

But it is now suggested that when the importers had found in paragraphs 306 and 307 the specific duties provided for bleached and colored cottons of certain count and weight, they should not have been satisfied with stopping there, but they should have gone on and examined certain provisos to those paragraphs which, in effect, provide for ad valorem instead of specific duties on goods valued at more than certain prices therein specified, *without regard to their weight*, and that the Collector was justified in going to these provisos, taking the ad valorem duties he found there, ignoring the specific duties found in the body of the paragraph, and adding two cents to the ad valorem rates of 30 and 35 per cent. provided for in the respective paragraphs. Why should either the importers or the Collector assume that these provisos had anything to do with the assessment of duties on goods covered by paragraph 313? That paragraph itself contains an ad valorem standard, and divides goods into two classes according as they are or are not worth seven cents per square yard. Why should either the importers or the Collector suppose that another ad valorem scheme contained in the provisos of para-

graphs 306 and 307 was to be applied to these goods? There is certainly nothing in paragraph 313 that says so. It seems that the goods there provided for are subject to the ad valorem rates of one and two cents in addition to "the duty herein provided for other cotton cloth of the same description or condition, *weight* and count of threads to the square inch." If it meant what the Attorney General contends it does mean, it would have contained the word "value," and would have read:

> "Other cotton cloth of the same description or condition, weight, *value* and count of threads to the square inch."

It does not say so, and it is pure assumption to say that it means so. The Board of General Appraisers suggested that the words "description or condition" were broad enough to include value, but as Judge Townsend pointed out in his decision in the Circuit Court, they are also broad enough to include weight and count; and when Congress used the words "weight and count" in addition to the words "description or condition," it is evident that they were using the words "description or condition" not in a broad, but in a narrow and restricted sense, intending them to be applied only to the description or condition of the goods, as unbleached, bleached, colored, dyed, painted, or printed.

The contention of the Attorney General is that where in certain paragraphs Congress had provided in the body of the paragraph for goods according to their description or condition, count and *weight*, and in the provisos to such paragraphs fixed a duty according to their value (*and independent of their weight*), and had in paragraph 313 fixed an additional duty according to value, to be added to the duties provided according to description or condition, *weight* and count, all the specific duties provided for the goods according to their description or condition, *weight* and count should be absolutely

ignored for the purpose of adding the two cents to an ad valorem duty only. If the Government's position is correct, neither the importer nor the Collector need have troubled himself about the weight of the goods at all, if he knew that the bleached goods were worth over 11 cents a square yard, or the colored goods were worth over 12 1/2 cents a square yard, because in that case the duty on them was 35 per centum ad valorem, utterly irrespective of their weight. But paragraph 313 expressly mentions their weight. Upon what theory has the Collector a right to disregard one of the qualifications mentioned in paragraph 313 and consider another qualification which is not mentioned in it.

There can be no question that the claim of the importer and the decisions of both the Circuit Court and the Circuit Court of Appeals are based on the plain and unambiguous language of the statute, and that the claim of the Collector and the argument of the Attorney-General are in plain opposition to the language of the statute, and it now only remains to consider the reasons assigned by the Attorney-General for asking this Court to disregard the plain wording of paragraph 313 to put into it the word "value" by judicial legislation.

One of the reasons assigned for this is that Congress intended to "impose an additional burden upon figured goods because of the great labor essential to their manufacture," and "to prescribe higher rates as values increase, through fineness, bleaching, coloring, &c."

The answer to this is that in the first place the language used by Congress being plain and unambiguous, this Court is concerned, not with what it intended to do, but with what it did, the searching for intent being proper only in cases of obscure ambiguous provisions. And the answer in the second place, is that nobody is disputing that Congress not only intended to, but did, in fact, increase duties according to fineness, bleaching, coloring, &c. The

specific rates on goods increase as the number of threads increase. The specific duties on bleached goods are higher than the specific duties on unbleached goods, and the specific duties on colored goods are higher than either. There is nothing in the importers' contention here that prevents the assessment of increasing duties in accordance with the increasing fineness or bleaching or coloring of goods. The only question at issue is whether Congress intended in paragraphs 305 to 309 to set up an ad valorem standard for cotton cloths that did not belong in paragraph 313, and in paragraph 313 to set up an ad valorem standard for the goods that did come within that paragraph. And the answer to the question whether they intended to do it is that they, in fact, did do it. Paragraph 313 has an ad valorem standard of its own, and having determined the additional duty according to that ad valorem standard, the additional duty is to be added to the specific rates provided in the preceding paragraphs based on description or condition, *weight* and count.

There is much in the brief of the Attorney-General about the protective policy of the Government, but, as this Court said in the case of Hadden *vs.* The Collector (5 Wall., 107):

> "What is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

The same idea was expressed by Judge Shipman, *In re* H. B. Claflin Co. (52 Fed. Rep., 121), where he said:

> "It is argued that it is unreasonable to suppose that Congress intended to impose a

> higher duty upon cotton handkerchiefs having a plain, cheap hem than upon those which were prevented from raveling in a more ornamental and expensive manner. It is true that the construction makes apparent a lack of symmetry in the rates of duty, but the Court cannot attempt to adjust into symmetry the various provisions of a statute which must include many details, by creating exceptions to a well settled, and, on the whole, satisfactory, rule of interpretation of the statute relating to the revenue from imports."

If Congress supposed that by the enactment of paragraph 313 they would be imposing upon the whole range of ornamented cotton cloths duties higher than those imposed on plain cloths and were mistaken in their assumption, *i. e.*, if the plain and unambiguous language they used did not accomplish a supposed legislative intent, the remedy is to be sought by those aggrieved, whether tax collectors or manufacturers, in remedial legislation by Congress, and not in judicial legislation by this Court.

Reference is made in the brief of Attorney-General to certain illustrative samples which were received by the Board of General Appraisers. Examination of the record will disclose (fols. 19, 20, 26), that these samples were received upon objection of the importers; that they were not in any way authenticated; that the witness who produced them declined to state when or by whom they were imported; that a motion was made to strike them from the record, which was denied. The Circuit Court very properly refused to attach any weight to them, or base any construction of the statute upon them.

The case of Bensusan *v.* Murphy, involving a question similar to that at issue here, was a well-considered decision entitled to weight in this court, not only from the eminence of the learned Judge by

whom it was decided, but by reason of its sound logic and correct conclusion, notwithstanding the Assistant Attorney-General suggests that it was an erroneous decision.

At the bottom of page 17 and top of page 18 of his brief, under Point IV., the learned Assistant Attorney-General suggests that unless the ad valorem provisions of the countable clauses apply to the goods which contain between 100 and 150 threads to the square inch, two cents is a maximum which can be collected on any figured cotton cloth. Of course this is not the case. The duty of two cents is always the duty additional to something else, and paragraph 306 contains a scale of specific duties to which the two cents is to be added. It is not the contention of the respondents that there is any cotton cloth which is subject to a duty of two cents and nothing else.

This case, it is respectfully submitted, should be disposed of in accordance with two well-settled principles of law:

1. Where the language of a statute is plain and unambiguous, it is the duty of the Court to enforce it according to the obvious meaning of the words without attempting to change it by adopting a different construction based upon some supposed policy of Congress in regard to the subject of legislation.

Bate Refrigerating Co. *vs.* Sulzberger, 157 U. S., 1.

2. If there be any doubt at all as to the construction of the statute (and we submit there is not), that doubt cannot be resolved in favor of the imposition of a higher tax.

U. S. *v.* Wigglesworth. 2 Story, 369.
Rice *vs.* U. S., 53 Fed. Rep., 910.
Hartranft *vs.* Wiegmann, 121 U. S., 609.

Matheson *vs.* U. S., 71 Fed. Rep., 894.
U. S. *vs.* Davis, 54 Fed. Rep., 147.
Adams *vs.* Bancroft, 3 Sum., 884.
McCoy *vs.* Hedden, 38 Fed. Rep., 89.

The judgment of the Circuit Court of Appeals should be affirmed.

Dated New York, October 17, 1906.

W. WICKHAM SMITH,
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Counsel.

Supreme Court of the United States.

No. 167.—October Term, 1906.

The United States, Petitioner, vs. George Riggs & Co. } On writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[November 12, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This case comes here on a certiorari granted to bring up a decision of the Circuit Court of Appeals affirming the decision of the Circuit Court and reversing that of a Board of United States General Appraisers. The respondents imported "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," to quote the words of paragraph 313 of the tariff act of July 24, 1897, (c. 11, 30 Stat. 175, 178.) The Collector and Board of General Appraisers decided that this cloth was liable to a duty of two cents per square yard under that paragraph and also, the different items being valued at over eleven, twelve and twelve and a half cents per square yard, to the *ad valorem* tax imposed by paragraphs 306 and 307 upon similar plain cloth above those values. The Circuit Court of Appeals, while admitting its belief that Congress intended to place an extra duty on figured cloth, felt bound to decide, upon the language of paragraph 313, that the tax placed by it upon figured cloth was to be added only to specific taxes imposed on less valuable cloths by paragraphs 306 and 307.

To explain: By paragraph 306 cotton cloth not bleached, &c., exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, &c., and not exceeding four square yards to the pound, pays one and a half cents per square yard, with an increasing rate as the number of yards to the pound increases. But a proviso substitutes for the foregoing a different set of duties on all cotton cloth with the same count of threads, not bleached, &c., if valued above a certain sum, for instance, if over nine cents per square yard, thirty per centum *ad valorem*, if over eleven, thirty-five, &c. Paragraph 307 is similar in form for cloths with between one hundred and fifty and two hundred threads.

By paragraph 313 figured cloth "shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of thread to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per

square yard if valued at more than seven cents per square yard." In the judgment appealed from it is assumed that the cloth in question, as figured cloth, is liable to this duty, and that, in deciding what such cloth shall pay, the collector must start from this paragraph. This paragraph must decide to what other duty the one here levied shall be added. If it stopped with the words "other cotton cloth of the same description, or condition," no doubt the tax might be added to an *ad valorem* tax when that would be required by paragraph 306 or 307. Those words might be taken to indicate cloth of similar value in cases within the provisos as well as goods of similar weight taxed under the first part of paragraphs 306 and 307. But as general words they would include weight as readily as value; and the mention of weight and count shows that they are used in a narrower sense, for instance, to indicate quality, as bleached or otherwise. Hence the criteria for the duty to which that under 313 is to be added all point to a specific duty alone; and these criteria therefore must determine for figured cloths the duty to which they are liable under paragraphs 306 and 307. You must not alter words in the interest of the imagined intent, and the importers are entitled to the benefit of even a doubt.

In spite of this reasoning, no one, we take it, has any serious doubt that paragraph 313 was not intended to affect or cut down duties already imposed in clear though general terms. The provisos of the earlier paragraphs are made applicable to "all cotton cloths" of the sorts described, in so many words. The qualified reading is due to scruples that hardly would occur except to the professional mind. As against those scruples, it is to be observed, in the first place, that the clauses to which we have referred and their neighbors, to go no further into the general scheme of the tariff act, consistently raise the amount of the tax on cotton cloth as the cloth becomes more expensive, and that it would reverse the tendency and go counter to the intent expressed everywhere else, if in this instance the more valuable goods were withdrawn from the general tax imposed upon their class. It is said that, in some cases, the construction contended for even would make the duty on figured cotton of a high price less than that on cheap cloth.

In the next place, if the language of paragraph 313 is not broad enough to apply to both classes of duty previously imposed, the easier contention would seem to be that the additional duty created by it was put only upon the first class, that of the cheaper goods taxed by weight, rather than that it cut down what already had been made clear. Such a notion would be disposed of by the fact that paragraph 313 applies to all cotton cloth and to all values, higher as well as lower than seven cents, and by other considerations not necessary to state. But if anything had to yield it would be paragraph 313.

The artificial doubt is raised by assuming that the collector must start with the first part of paragraph 313 and find out what his assessments are to be from that alone. That is a mistake. He has before him the whole Act. He has been told in the earlier paragraphs in unmistakable language that all cotton cloth with this number of threads and above a certain value must pay thirty or thirty-five cents *ad valorem*. Then comes this paragraph, which on its face purports to make an addition to some tax which it assumes to have been imposed by the earlier ones. It is intended to hit all cotton cloths and all values, and it is intended to be added to a tax already imposed. But this would not be the case if the presence of a figure in the cloth changed the rate established by the preceding scheme.

The truth is, as pointed out in the argument for the Government, that the element of value is woven through the whole tissue of the Act. The collector does not know what duty to assess, even under 313, without a valuation. It cannot be found out what "the duty herein provided" is, or whether it is specific or *ad valorem*, without making a valuation under the previous paragraphs, just as if 313 did not exist. Paragraphs 306 and 307 tell the collector to make it on all cotton and to assess a duty on all cotton above a certain value after the valuation is made. Paragraph 313 assumes the duty imposed by 306 and 307 to have been assessed. As against these plain directions, coupled with the manifest intent of the Act, the failure to mention value along with weight raises no serious doubt in our minds.

Decree reversed.

True copy.

Test:

Clerk Supreme Court U. S.